

CHAPTER 141

SENATE Substitute for HOUSE BILL No. 2369
(Amends Chapter 143)

AN ACT concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 19-101a, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 and repealing the existing sections; also repealing K.S.A. 19-101a, as amended by section 7 of 2009 Senate Bill No. 336, and 19-101m.

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

New Section 1. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the renewable energy standards act.

New Sec. 2. As used in the renewable energy standards act:

(a) "Affected utility" means any 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.

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

(c) "Net renewable generation capacity" means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.

(d) "Peak demand" means the demand imposed by the affected utility's retail load in the state.

(e) "Renewable energy credit" means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.

(f) "Renewable energy resources" means net renewable generation capacity from:

(1) Wind;

(2) solar thermal sources;

(3) photovoltaic cells and panels;

(4) dedicated crops grown for energy production;

(5) cellulosic agricultural residues;

(6) plant residues;

(7) methane from landfills or from wastewater treatment;

(8) clean and untreated wood products such as pallets;

(9) (A) existing hydropower;

(B) new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less;

(10) fuel cells using hydrogen produced by one of the above-named renewable energy resources; and

(11) other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to section 7, and amendments thereto.

New Sec. 3. (a) The commission shall establish by rules and regulations a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits. For the purposes of calculating the capacity from renewable energy credit purchases, the affected utility shall use its actual capacity factor from its owned renewable generation from the immediately previous calendar year. Renewable energy credits may only be used to meet a portion of portfolio requirements for the years 2011, 2016 and 2020, unless otherwise allowed by the commission. Such portfolio requirement shall provide net renewable generation capacity that shall constitute the following portion of each affected utility's peak demand:

(1) Not less than 10% of the affected utility's peak demand for calendar years 2011 through 2015, based on the average demand of the prior three years of each year's requirement;

(2) not less than 15% of the affected utility's peak demand for calendar years 2016 through 2019, based on the average demand of the prior three years of each year's requirements; and

(3) not less than 20% of the affected utility's peak demand for each calendar year beginning in 2020, based on the average demand of the prior three years of each year's requirement.

(b) The portfolio requirements described in subsection (a) shall apply

to all power sold to Kansas retail consumers whether such power is self-generated or purchased from another source in or outside of the state. The capacity of all net metering systems interconnected with the affected utilities under the net metering and easy connection act in section 8 et seq., and amendments thereto, shall count toward compliance.

(c) Each megawatt of eligible capacity in Kansas installed after January 1, 2000, shall count as 1.10 megawatts for purposes of compliance.

(d) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

New Sec. 4. The commission shall allow affected utilities to recover reasonable costs incurred to meet the new renewable energy resource requirements required in the renewable energy standards act.

New Sec. 5. For each affected utility, the commission shall determine whether investment in renewable energy resources required to meet the renewable portfolio requirement, as required by section 3, and amendments thereto, causes the affected utility's total revenue requirement to increase one percent or greater. The retail rate impact shall be determined net of new nonrenewable alternative sources of electricity supply reasonably available at the time of the determination.

New Sec. 6. (a) The commission shall establish rules and regulations for the administration of the renewable energy standards act, including reporting and enforcement mechanisms necessary to ensure that each affected utility complies with this standard and other provisions governing the imposition of administrative penalties assessed after a hearing held by the commission. Administrative penalties should be set at a level that will promote compliance with the renewable energy standards act, and shall not be limited to penalties set forth in K.S.A 66-138 and 66-177, and amendments thereto.

(b) For the calendar years 2011 and 2012, the commission is not required to assess penalties if the affected utility can demonstrate it made a good faith effort to comply with the portfolio standards requirement. The commission shall exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in section 5, and amendments thereto, has been reached or exceeded and the utility has not achieved full compliance with section 3, and amendments thereto. In imposing penalties, the commission shall have discretion to consider mitigating circumstances. Under no circumstances shall the costs of administrative penalties be recovered from Kansas retail customers.

(c) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

New Sec. 7. (a) The commission shall establish rules and regulations for the administration of a certification process for use of renewable energy resources described in subsection (f)(11) of section 2, and amendments thereto, for purposes of fulfilling the requirements of section 3, and amendments thereto. Criteria for the certification process shall be determined by factors that include, but are not limited to: Fuel type, technology and the environmental impacts of renewable energy resources described in subsection (f)(11) of section 2, and amendments thereto. Use of renewable energy resources described in subsection (f)(11) of section 2, and amendments thereto, shall not cause undue or adverse air, water or land use impacts.

(b) The commission shall establish rules and regulations required in this section within 12 months of the effective date of this act.

New Sec. 8. Sections 8 through 16, and amendments thereto, shall be known and may be cited as the net metering and easy connection act.

New Sec. 9. As used in the net metering and easy connection act:

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

(b) "Customer-generator" means the owner or operator of a net metered facility which:

(1) Is powered by a renewable energy resource;

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

(3) is interconnected and operates in parallel phase and synchronization with an affected utility and is in compliance with the standards established by the affected utility;

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

(5) contains a mechanism, approved by the utility, 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.

(c) "Peak demand" shall have the meaning ascribed thereto in section 2, and amendments thereto.

(d) "Renewable energy resources" shall have the meaning ascribed thereto in section 2, and amendments thereto.

(e) "Utility" means investor-owned electric utility.

New Sec. 10. Each utility shall:

(a) Make net metering available to customer-generators on a first-come, first-served basis, until the total rated generating capacity of all net metered systems equals or exceeds one percent of the utility's peak demand during the previous year. The commission may increase the total rated generating capacity of all net metered systems to an amount above one percent after conducting a hearing pursuant to K.S.A. 66-101d, and amendments thereto;

(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 and 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;

(c) provide a residential class bidirectional meter to the customer-generator at no charge, but may charge the customer-generator for the cost of any additional metering or distribution equipment necessary to accommodate the customer-generator's facility; and

(d) 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 utility.

New Sec. 11. (a) If the electricity supplied by the utility exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed for the net electricity supplied by the utility in accordance with normal practices for customers in the same rate class.

(b) If a customer-generator generates electricity in excess of the customer-generator's monthly consumption, all such net excess energy (NEG), expressed in kilowatt-hours, shall be carried forward from month-to-month and credited at a ratio of one-to-one against the customer-generator's energy consumption, expressed in kilowatt-hours, in subsequent months.

(c) Any net excess generation credit remaining in a net-metering customer's account at the end of each calendar year shall expire.

New Sec. 12. Each utility shall allow:

(a) Residential customer-generators to generate electricity subject to net metering up to 25 kilowatts; and

(b) commercial, industrial, school, local government, state government, federal government, agricultural and institutional customer-generators to generate electricity subject to net metering up to 200 kilowatts.

Customer-generators shall appropriately size their generation to their expected load.

New Sec. 13. (a) Net metered facilities must meet 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. A utility 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) A utility may not require a customer-generator whose net metering facility meets the standards in subsection (a) to comply with additional safety or performance standards or perform or pay for additional tests or purchase additional liability insurance. A utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metered facility or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

New Sec. 14. The commission shall, within 12 months from the effective date of the net metering and easy connection act, establish rules and regulations necessary for the administration of the act, which shall include rules and regulations ensuring that simple contracts are used for interconnection and net metering. For systems less than 25 kilowatts, 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. 15. Reasonable costs incurred by a utility under the net metering and easy connection act shall be recoverable in the utility's rate structure.

New Sec. 16. The estimated generating capacity of all net metered facilities operating under the provisions of this act shall count toward the affected utility's compliance with the renewable energy standards act in sections 1 through 7, and amendments thereto.

New Sec. 17. As used in sections 17 through 21, and amendments thereto:

(a) "ASHRAE" means American society of heating, refrigerating and air-conditioning engineers, inc. standard 90.1-2007.

(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 construction" 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. 18. Within 18 months after the effective date of this act, 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. 19. (a) The secretary of administration shall adopt rules and regulations, within 18 months of the effective date of this act, for state agencies for the conduct of an energy audit at least every five years on all state-owned real property. 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, the secretary of administration shall submit a written report to the joint committee on state building construction, the house committee on energy and utilities and the senate committee on utilities, or their successors, and an electronic copy to the legislature, identifying state-owned real property locations in which an excessive amount of energy is being used in accordance with rules and regulations adopted, within 18 months after the effective date of this act, by the secretary of administration concerning energy efficiency performance standards for state-owned 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. Within 18 months after the effective date of this act, 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. 20. Within the limitations of appropriations therefor, the energy programs division of the state corporation commission shall develop and increase the participation of school districts and local governments in the facilities conservation improvements program pursuant to K.S.A. 75-37,125, and amendments thereto.

New Sec. 21. Within 18 months after the effective date of this act, 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 meet

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.

Sec. 22. 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.

(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 system. 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 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. 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 of any investor owned utility 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.*

(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 customer'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 3, 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 metering tariffs upon request of an electric utility for other methods of renewable generation not prescribed in subsection (b)(1) of section 9, and amendments thereto.*

Sec. 23. 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 ev-

idence.

~~(e)~~ (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. If the secretary determines that more stringent, restrictive or expansive rules and regulations are necessary, the secretary may implement the rules and regulations only after approval by an act of the legislature. The restrictions of this subsection 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.*

Sec. 24. 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. 25. 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, the secretary may issue a temporary order not to exceed seven days 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 issuance 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. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction.

(c) *The secretary may bring suit in any court of competent jurisdiction to immediately restrain the acts or practices specified in subsection (a).* 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.

Sec. 26. K.S.A. 66-104d is hereby amended to read as follows: 66-104d. (a) As used in this section, "cooperative" means any ~~cooperative~~, as defined by K.S.A. 17-4603, and amendments thereto, which has fewer than 15,000 customers and which provides power principally at retail 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 member-owned corporation formed prior to 2004.

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

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

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

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

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

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

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

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

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

(f) Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission, as otherwise provided by law, over a cooperative with regard to service territory; charges, *fees or tariffs* for transmission services; sales of power for resale, *other than sales between a cooperative, as defined in subsection (a), that does not provide retail electric service and an owner of such cooperative*; and wire stringing and transmission line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments thereto.

(g) (1) Notwithstanding a cooperative's election to be exempt under this section, the commission shall investigate all rates, joint rates, tolls, charges and exactions, classifications and schedules of rates of such cooperative if there is filed with the commission, not more than one year after a change in such cooperative's rates, joint rates, tolls, charges and exactions, classifications or schedules of rates, a petition *in the case of a retail distribution cooperative* signed by not less than 5% of all the cooperative's customers or 3% of the cooperative's customers from any one rate class, *or, in the case of a generation and transmission cooperative, not less than 20% of the generation and transmission cooperative's members or 5% of the aggregate retail customers of such members*. If, after investigation, the commission finds that such rates, joint rates, tolls, charges or exactions, classifications or schedules of rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix and order substituted therefor such rates, joint rates, tolls, charges and exactions, classifications or schedules of rates as are just and reasonable.

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

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

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

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

(i) (1) Any cooperative exempt under this section shall maintain a schedule of rates and charges at the cooperative headquarters and shall make copies of such schedule of rates and charges available to the general public during regular business hours.

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

(j) *A cooperative that has elected to be exempt under the provisions of subsection (b) shall include a provision in its notice to customers, either before or after a rate change, of the customer's right to request the commission to review the rate change, as allowed in subsection (g).*

(k) *Notwithstanding any provision of law to the contrary, a cooperative, as defined in subsection (a), shall be subject to the provisions of the renewable energy standards act.*

New Sec. 27. Within 18 months after the effective date of this act, the secretary of administration shall adopt rules and regulations that require that the average fuel economy standard for state-owned motor vehicles purchased during fiscal year 2011 shall not be less than 10% higher than the average fuel economy standard of state-owned motor vehicles

purchased during fiscal year 2008, if such higher average fuel economy standards are life-cycle cost effective for such motor vehicles purchased during fiscal year 2011. The head of each state agency shall provide information to and cooperate with the secretary of administration for the purposes of implementing and administering this section and the rules and regulations adopted by the secretary of administration.

New Sec. 28. (a) The joint committee on energy and environmental policy established pursuant to K.S.A. 2008 Supp. 46-3701, and amendments thereto, in addition to the provisions of subsection (j) of K.S.A. 2008 Supp. 46-3701, and amendments thereto, shall include recommendations concerning the use of moneys received by the state pursuant to the American recovery and reinvestment act of 2009, (U.S.C. 12501) for energy efficiency and conservation block grants, state energy programs, the weatherization assistance program and the alternative fueled vehicles pilot grant program in such joint committee's report to the 2010 and 2011 legislature.

(b) The provisions of this section shall expire on January 1, 2011.

Sec. 29. K.S.A. 2008 Supp. 74-99d07 is hereby amended to read as follows: 74-99d07. (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) 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;

(10) 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;

(11) 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;

(12) as provided by K.S.A. 2008 Supp. 74-99d09, 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;

(13) 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;

(14) 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;

(15) 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~~

(16) 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; *and*

(17) establish and charge reasonable fees, rates, tariffs or other charges, unless costs are recoverable under paragraph (14), for the use of all facilities owned, financed or administered by it and for all services rendered by it, and, if all costs are not recovered under paragraph (14), such costs shall be recovered through assessments against any entity or entities requesting use of facilities owned, financed or administered by the authority or for all requested services provided by the authority, or both.

(b) 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 K.S.A. 2008 Supp. 74-99d10, and amendments thereto, of the preceding fiscal year.

(c) 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.

Sec. 30. K.S.A. 2008 Supp. 74-99d14 is hereby amended to read as follows: 74-99d14. (a) Subject to the provisions of this act, the authority shall have the power to:

(1) Plan, finance, construct, develop, acquire, own, dispose of, contract for maintenance of and contract 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; and

(2) participate in partnerships or joint ventures with individuals, cor-

porations, 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 K.S.A. 2008 Supp. 74-99d09, and amendments thereto.

(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 section, 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 in the Kansas register 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, *for electric transmission lines with an operating voltage of 60 kilovolts or more*, which have been approved by such organization.

New Sec. 31. (a) Any new coal-fired electricity generating facility in Kansas, construction of which commences on or after the effective date of this act, shall purchase Kansas coal for at least 5% of its coal requirements. For the purposes of this section, "Kansas coal" shall have the meaning ascribed thereto in K.S.A. 2008 Supp. 79-32,228, and amendments thereto.

(b) The provisions of this section shall apply if the cost of the Kansas coal, including costs of transportation and handling at the new coal-fired electricity generating facility, is:

(1) Competitive to the cost of the out-of-state coal supply the owner

or operator of the new coal-fired electricity generating facility is using to meet its remaining coal supply requirements;

(2) sold on comparable contractual terms and specification; and

(3) of an acceptable quality for use in the new coal-fired electricity generating facility.

This section shall not apply if the use or purchase of Kansas coal will result in the owner or operator of the new coal-fired electricity generating facility violating its air permit or a contractual obligation to which the owner or operator is subject.

New Sec. 32. Sections 32 through 39, and amendments thereto, shall be known and may be cited as the compressed air energy storage act.

New Sec. 33. As used in the compressed air energy storage act:

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

(b) "Department" means the department of health and environment.

New Sec. 34. (a) Within 18 months after the effective date of this act, the commission shall establish rules and regulations establishing requirements, procedures and standards for the safe and secure injection of compressed air into storage wells, which shall include maintenance of underground storage of compressed air. Such rules and regulations shall include, but not be limited to:

(1) Site selection criteria;

(2) design and development criteria;

(3) operation criteria;

(4) casing requirements;

(5) monitoring and measurement requirements;

(6) safety requirements, including public notification;

(7) closure and abandonment requirements, including the financial requirements of subsection (d); and

(8) long-term monitoring.

(b) The commission may adopt rules and regulations establishing fees for permitting, monitoring and inspecting operators of compressed air energy storage wells and underground storage. Fees collected by the commission under this section shall be remitted by the commission to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the compressed air energy storage fund.

(c) The commission or the commission's duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the commission or representative deems necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(d) Any company or operator receiving a permit under the provisions of the compressed air energy storage act shall demonstrate annually to the commission evidence, satisfactory to the commission, that the permit holder has financial ability to cover the cost of closure of the permitted facility as required by the commission.

(e) The commission may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(f) Rules and regulations adopted under the compressed air energy storage act shall apply to any compressed air energy storage well, whether in existence on the effective date of this act or thereafter.

New Sec. 35. Within 18 months after the effective date of this act, the department shall establish rules and regulations establishing requirements, procedures and standards for the monitoring of air emissions coming from compressed air energy storage wells and storage facilities to ensure the wells and facilities comply with the Kansas air quality act.

New Sec. 36. The commission and the department may enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the compressed air energy storage act.

New Sec. 37. (a) The commission, upon a finding that a person has violated any provision of section 34, and amendments thereto, or rules and regulations adopted thereunder, may impose a penalty not to exceed \$10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation,

every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the commission to the person who committed the violation. The order shall state the violation and the penalty to be imposed.

(c) Whenever the commission or the commission's duly authorized representative find that the soil or waters of the state are not being protected from pollution resulting from the storage of compressed air, the commission or the commission's duly authorized representative shall issue an order prohibiting such storage. Any person aggrieved by such order may request in writing, within 15 days after service of the order, a hearing on the order. Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the commission pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 38. (a) In performing investigations or administrative functions relating to prevention of pollution of the soil or waters of the state, the commission or the commission's duly authorized representative may enter any property or facility which is subject to the provisions of section 34, and amendments thereto, for the purpose of observing, monitoring, collecting samples, examining records and facilities to determine compliance or noncompliance with state laws and rules and regulations relating to air pollution, water pollution, soil pollution or public health or safety.

(b) The representatives of the commission shall have the right of ingress and egress upon any lands to clean up pollution from the storage of compressed air over which the commission has jurisdiction pursuant to section 34, and amendments thereto. Such representatives shall have the power to occupy such land if necessary to investigate and clean up such pollution or to investigate and plug any such compressed air energy storage well. Any representative entering upon any land to investigate and clean up such pollution or to investigate and plug any such compressed air energy storage well shall not be liable for any damages necessarily resulting therefrom, except damages to growing crops, livestock or improvements on the land. Upon completion of activities on such land, such representative shall restore the premises to the original contour and condition as nearly as practicable.

New Sec. 39. (a) (1) There is hereby established in the state treasury the compressed air energy storage fund. Such fund shall be administered by the commission in accordance with the provisions of this section for the purpose of administering the provisions of the compressed air energy storage act.

(2) The 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 for the purposes of the compressed air energy storage act. Upon receipt of the remittance the state treasurer shall deposit the entire amount in the state treasury and credit it to the fund. The commission is authorized to receive from any private or governmental source any funds made available for the purposes of the compressed air energy storage act.

(3) All expenditures from the compressed air energy storage fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission or a person designated by the chairperson.

(b) The commission is authorized to use moneys from the compressed air energy storage fund to pay the cost of:

(1) All activities related to permitting activities, including, but not limited to, development and issuance of permits, compliance monitoring, inspections, well closures, underground storage closure, long-term monitoring and enforcement actions;

(2) review and witnessing of test procedures;

(3) review and witnessing of routine workover or repair procedures;

(4) investigation of violations, complaints, pollution and events affecting public health;

(5) design and review of remedial action plans;

(6) contracting for services needed to supplement the commission's staff expertise in facility investigations;

- (7) consultation needed concerning remedial action at a permitted facility;
- (8) mitigation of adverse environmental impacts;
- (9) emergency or long-term remedial activities;
- (10) legal costs, including expert witnesses, incurred in administration of the provisions of the compressed air energy storage act; and
- (11) costs of program administration.

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

- (1) The average daily balance of moneys in the compressed air energy storage fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding months.

Sec. 40. K.S.A. 55-1,117 is hereby amended to read as follows: 55-1,117. (a) As used in this section, K.S.A. 65-171d and K.S.A. 55-1,118 through 55-1,122, and amendments thereto:

(1) *“Company or operator” means any form of legal entity including, but not limited to, a corporation, limited liability company and limited or general partnerships.*

(2) *“Secretary” means the secretary of health and environment.*

~~(2)~~ (3) *“Underground porosity storage” means the storage of hydrocarbons in underground, porous and permeable geological strata which have been converted to hydrocarbon storage.*

(b) For the purposes of protecting the health, safety and property of the people of the state, and preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, the secretary of health and environment shall adopt separate and specific rules and regulations establishing requirements, procedures and standards for the following:

- (1) Salt solution mining;
- (2) the safe and secure underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and
- (3) the safe and secure underground storage of natural gas in bedded salt.

(c) Such rules and regulations shall include, but not be limited to:

- (1) Site selection criteria;
- (2) design and development criteria;
- (3) operation criteria;
- (4) casing requirements;
- (5) monitoring and measurement requirements;
- (6) safety requirements, including public notification;
- (7) closure and abandonment requirements, including the financial requirements of subsection (f); and
- (8) long term monitoring.

(d) (1) The secretary may adopt rules and regulations establishing fees for the following services:

- (A) Permitting, monitoring and inspecting salt solution mining operators;
- (B) permitting, monitoring and inspecting underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and
- (C) permitting, monitoring and inspecting underground storage of natural gas in bedded salt.

(2) The fees collected under this section by the secretary shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the subsurface hydrocarbon storage fund.

(e) The secretary or the secretary’s duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the secretary or representative deems necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(f) Any company or operator receiving a permit under the provisions of this act shall demonstrate annually to the department of health and

environment evidence, satisfactory to the department, that such permit holders have financial ability to cover the cost of closure of such permitted facility as required by the department.

(g) The secretary may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(h) (1) For a period of two years from July 1, 2001, or until the rules and regulations provided for in ~~paragraph (3) of subsection (a)~~ (b)(3) are adopted, the injection of working natural gas into underground storage in bedded salt is prohibited, except that cushion gas may be injected into existing underground storage in bedded salt. Natural gas currently stored in such underground storage may be extracted.

(2) Any existing underground storage of natural gas in bedded salt shall comply with the rules and regulations adopted under this section prior to the commencement of injection of working natural gas into such underground storage.

(3) Rules and regulations adopted under ~~paragraph (3) of subsection (a)~~ (b)(3) shall be adopted on or before July 1, 2003.

(i) No hydrocarbon storage shall be allowed in any underground formation if water within the formation contains less than 5,000 milligrams per liter chlorides.

Sec. 41. 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, 65-1,178 through 65-1,199, 65-3001 through 65-3028, and amendments thereto.

(28) Counties may not exempt from or effect changes in K.S.A. 2008 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. 2008 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.

New Sec. 42. (a) The secretary shall timely approve a prevention of significant deterioration permit (PSD) to sunflower electric power corporation to be issued consistent with the settlement agreement executed May 4, 2009, by sunflower electric power corporation and the governor of the state of Kansas to resolve all claims or causes of action, or both, pending before various courts and administrative agencies consistent with article V of the settlement agreement.

(b) This section shall be part of and supplemental to the Kansas air quality act.

New Sec. 43. The provisions of this act 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. 44. K.S.A. 19-101a, 19-101m, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 are hereby repealed.

Sec. 45. On and after July 1, 2009, K.S.A. 19-101a, as amended by section 7 of 2009 Senate Bill No. 336, is hereby repealed.

Sec. 46. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 22, 2009.

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