

SESSION OF 2009

**SUPPLEMENTAL NOTE ON  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2369**

As Recommended by Senate Committee on  
Utilities

**Brief\***

Senate Sub. for HB 2369 would enact new law and amend existing law related to energy. The bill would:

- Enact the Renewable Energy Standards Act;
- Enact the Net Metering and Easy Connection Act;
- Enact new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amends the parallel generation statute;
- Amend the Kansas Air Quality Act in regard to its relationship to federal law and in regard to emergency authority;
- Amend existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Direct the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues;
- Amend the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Amend existing law regarding entities that store hydrocarbons underground;
- Enact the Compressed Air Energy Storage Act;
- Require the purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and
- Require the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric Power Corporation and the State.

The bill becomes effective upon publication in the *Kansas Register*.

Elements of the bill are described below.

### **Renewable Energy Standards Act**

The bill would enact the Renewable Energy Standards Act that would require electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The Kansas Corporation Commission (KCC) would have broad authority to adopt rules and regulations implementing the standards and establishing enforcement mechanisms including administrative fines.

Renewable energy could be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells using hydrogen produced by one of the other

renewable energy resources; and other sources of energy, not including nuclear power, that become available after enactment of the bill and that are certified as renewable under rules and regulations of the KCC.

The renewable portfolio requirement would require net renewable generation capacity constituting not less than the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits could be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the Commission.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000 would count as 1.10 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act (also part of the bill) or the parallel generation statute, would count toward compliance with the renewable energy requirement.

Utilities could recover in rates those costs incurred to meet the renewable energy requirement.

### **Net Metering and Easy Connection Act**

The bill would enact the Net Metering and Easy Connection Act and amend the parallel generation statute. The Act would require any investor-owned electric utility to make net metering available to customer-generators under certain circumstances. Renewable energy resources that could be used to generate electricity under the Net Metering Act would

be the same as those defined in the Renewable Energy Standards Act.

Customer-generators could utilize either the parallel generation statute or the Net Metering Act. The choice would have to be made in writing and filed with the company serving the customer-generator. The maximum capacity of generating equipment allowed for use by customer-generators under the Act would be 25 kilowatts for residential customers and 200 kilowatts for other customers.

The Act would provide that retail electric companies measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter provided to the customer-generator at no cost by the electric company. If the company provides the customer-generator with more power during a billing period than the customer generates, the customer would be billed for the net amount of electricity provided by the company. If the amount of electricity generated by the customer exceeds the amount provided by the company, the net excess electricity generated by the customer would be carried forward from month to month and credited at a ratio of 1:1 against the customer's energy consumption. Credits remaining at the end of the calendar year would expire. Electric companies would be able to recover in their rate structures those costs incurred under the Act.

Customers' generating equipment would have to meet specifications established by the Act including being appropriately sized to the customer-generator's electrical load and complying with specified safety, performance, interconnection and reliability standards. The utility could not require additional insurance if the net metering facility meets the safety and performance standards in the Act. A utility would 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 a customer-generator that cause loss or injury, including death, to any third party.

The Act would establish the maximum amount of net generation capacity that a supplier must accept on its system at one percent of the supplier's peak demand during the prior year. The KCC would be authorized to increase the limit after a hearing.

The KCC would be authorized in the parallel generation statute to approve net metering tariffs requested by electric utilities for other methods of renewable generation not described in the Net Metering Act.

The KCC would be required to adopt rules and regulations to implement the Net Metering Act. Suppliers would be able to recover costs incurred in connection with compliance with the Net Metering Act.

### **Energy Efficiency**

The bill requires the Secretary of Administration to adopt rules and regulations within 18 months of the effective date of the Act:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008 if such purchases would be life-cycle cost-effective;
- Establishing energy efficiency guidelines for state agencies for the purchase of products and equipment such as appliances, lighting fixtures and bulbs, and computers, that are at least as energy efficient as similar products that qualify for the Energy Star® program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Establishing energy efficiency performance standards for state-owned and leased real property, and requiring state

agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary would be prohibited from approving, renewing or extending any building lease unless the lessor has submitted an energy audit for the building. Lessors would be required to address the performance standards based on the energy audit. On an annual basis, the Secretary would be required to submit a report to the Legislature, the Joint Committee on State Building Construction, the House Committee on Energy and Utilities, and the Senate Committee on Utilities, identifying properties where an excessive amount of energy is being used.

- Prescribing energy efficiency performance standards for construction of state buildings. All new and, to the extent possible, renovated, state-owned buildings would have to be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2007 or the 2006 International Energy Conservation Code (IECC). Regulations adopted under these provisions would only apply if they are life-cycle cost-effective.

The Energy Office of the Kansas Corporation Commission (KCC) would be required to develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP) to the extent that funds are appropriated for that purpose.

### **Deregulation of Large Electric Cooperatives**

The bill would amend existing law to allow large electric cooperatives to remove themselves from the regulatory jurisdiction of the KCC regarding rates. Under the bill, the option to deregulate is expanded to cover the following entities:

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies or corporations that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and
- Any member-owned corporation formed prior to 2004.

Those entities and other cooperatives would be under the jurisdiction of the KCC for purposes of the Renewable Energy Standards Act.

The bill would amend existing law to require that, in the case of a generation and transmission cooperative that elected to be deregulated, a petition signed by at least 20 percent of that cooperative's members or by five percent of the aggregate retail customers of such members would trigger a KCC review of a rate change. In addition, the bill would require cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill would add to the statute clarifying language regarding the portion of members of a retail distribution cooperative who must sign a rate review petition, but that portion of members would remain as in the existing law.

### **Kansas Air Quality Act Amendments**

The bill would amend the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act unless authorized by the Legislature to do so. The restriction in the bill does not apply to a plan for a nonattainment area under the federal Clean Air Act. The bill also would prohibit rules and regulations under the State Act from being enforced in any area of the State prior to the time

required under the federal Act. Counties would be prohibited from utilizing home rule authority to create exemptions from, or to change the application of, the Kansas Air Quality Act.

The Secretary would be prohibited from denying or delaying issuance of a permit required under the State Act if the requirements of that Act have been met by the applicant.

KSA 65-3012 would be amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The new provision authorizes the Secretary of Health and Environment to issue a temporary order directing the owner or operator of the pollution source to take steps necessary to prevent the offending act or to eliminate the offending practice. The order could not exceed 7 days in duration.

When the temporary order is issued, the Secretary would be authorized to file an action in district court to enjoin the offending activity. Alternatively, the Secretary could request the Attorney General or the appropriate county or district attorney to file for the injunction. In addition, the Secretary could bring suit in any court of competent jurisdiction to immediately restrain the offending acts or practices. The court could issue a temporary or permanent injunction if the Secretary shows that the offending condition or situation exists.

Persons aggrieved by an order of the Secretary issued under the new procedure would be entitled to review of the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party would not be required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision would have precedence over other cases in regard to order of trial.



## **Joint Committee on Energy and Environmental Policy**

The bill would require the Joint Committee on Energy and Environmental Policy to study and make recommendations regarding the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, weatherization, energy conservation, alternative fuel vehicles and state energy programs. The results of these studies would be submitted to the Legislature in 2010 and 2011 as part of the Committee's annual report.

## **Kansas Electric Transmission Authority**

The bill would authorize the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs or other charges for use of facilities owned, financed or administered by KETA and for services rendered by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the Kansas Corporation Commission. Such fees could be charged only to the entity or entities that request services from KETA.

The amendment also would clarify that KETA's statutory rights and powers extend to electric transmission lines that have been deemed compatible with plans adopted by the Southwest Power Pool, as well as to transmission lines with an operating voltage of 60 kilovolts or more which have been approved by the Southwest Power Pool.

## **Underground Hydrocarbon Storage Wells**

The bill would amend the law regarding underground hydrocarbon storage wells by adding a definition for "company or operator." The term would be defined as any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

## **Compressed Air Energy Storage Act**

The bill would establish a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC would be required to adopt rules and regulations addressing issues such as site selection, design and operation criteria, and requirements for monitoring, safety and closure.

The KCC also would be authorized to establish rules and regulations establishing fees for permitting, monitoring and inspecting compressed air storage facility operators. Moneys received under the Act would be deposited in the Compressed Air Energy Storage Fund, which would be created by the Act, and used to pay the costs of regulation.

The Kansas Department of Health and Environment (KDHE) would be required to adopt rules and regulations related to air emissions from compressed air energy storage wells and storage facilities to ensure compliance with the Kansas Air Quality Act. The KCC and KDHE would be authorized to enter into a memorandum of understanding concerning implementation of the Act.

The bill would create financial penalties for violations of the Act.

All rules and regulations issued pursuant to the Act would have to be adopted within 18 months of enactment of the new law.

## **Kansas Coal Requirement**

Any new coal-fired electricity generation facility in Kansas constructed after the effective date of the Act would be required to purchase at least five percent of its coal from Kansas coal mines. This requirement would apply only if the Kansas coal is cost-competitive to out-of-state coal, is sold on comparable terms and specifications, and is of an acceptable quality for use

in the facility. The requirement would not apply if it would cause the facility to violate its air permit or a contractual obligation.

### **Settlement Agreement**

The bill would add a new provision in the Kansas Air Quality Act to require the Secretary of Health and Environment to approve the air quality permit for Sunflower Electric Power Corporation's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009 between Sunflower and the State of Kansas. The settlement would resolve actions pending before various courts and administrative agencies.

### **Background**

The Senate substitute bill was recommended by the Senate Utilities Committee after the former Governor vetoed Sen. Sub. for Sub. HB 2014 and the current Governor reached a settlement agreement with Sunflower Electric Power Corporation regarding issuance of an air quality permit for construction of a new electricity generation facility at Holcomb. The substitute bill contains provisions originally contained in HB 2127 and Sub. HB 2014 as well as provisions included in the vetoed bill. Provisions of the substitute bill also are contained in SB 339, introduced by the Senate Committee on Federal and State Affairs. SB 339 was in the Senate Utilities Committee at the time the Committee took action on Sub. for HB 2369.

The Senate Utilities Committee received a briefing at which representatives of the Governor's office and Sunflower presented information regarding the settlement agreement. Staff provided a review of SB 339 and a comparison with the source bills.

The Senate Committee made the following changes to provisions introduced as SB 339 prior to recommending the substitute bill:

- The six-month length of time allowed for agencies to adopt rules and regulations was extended to 12 months throughout the bill;
- The definition of renewable resources was changed to include existing hydropower in the definition for purposes of the Renewable Energy Standards Act and the Net Metering Act;
- The impact on air and water resources of the gathering of renewable resource feedstocks was deleted as a criterion for certification of new renewable resources;
- Language of the bill was clarified to ensure inclusion of non-regulated large cooperatives in the renewable energy standards requirements; and
- Various clarifying and technical amendments also were made to the language prior to introduction of the substitute bill.

A fiscal note for the substitute bill was not available at the time the Senate Utilities Committee took action on the bill.