

{As Amended by Senate Committee of the Whole}

Session of 2016

SENATE BILL No. 318

By Committee on Utilities

1-12

AN ACT concerning utilities; relating to state entities; concerning the Kansas electric transmission authority; abolishing certain funds and transferring the balances; ***{concerning the department of health and environment and the state corporation commission, agency activities;}*** amending K.S.A. 2015 Supp. 45-229 ***{and 65-3031}*** and repealing the existing ~~section~~ ***{sections}***; also repealing K.S.A. 2015 Supp. 74-99d01, 74-99d02, 74-99d03, 74-99d04, 74-99d05, 74-99d06, 74-99d07, 74-99d08, 74-99d10, 74-99d11, 74-99d12, 74-99d13 and 74-99d14.

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

New Section 1. On the effective date of this act, the director of accounts and reports shall transfer all moneys in the KETA administrative fund and the KETA development fund to the state general fund. On the effective date of this act, all liabilities of the KETA administrative fund and the KETA development fund are hereby transferred to and imposed on the state general fund and the KETA administrative fund and the KETA development fund are hereby abolished.

Sec. 2. K.S.A. 2015 Supp. 45-229 is hereby amended to read as follows: 45-229. (a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

(1) The public record is of a sensitive or personal nature concerning individuals;

(2) the public record is necessary for the effective and efficient administration of a governmental program; or

(3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

1 (b) Subject to the provisions of subsections (g) and (h), any new
2 exception to disclosure or substantial amendment of an existing exception
3 shall expire on July 1 of the fifth year after enactment of the new
4 exception or substantial amendment, unless the legislature acts to continue
5 the exception. A law that enacts a new exception or substantially amends
6 an existing exception shall state that the exception expires at the end of
7 five years and that the exception shall be reviewed by the legislature
8 before the scheduled date.

9 (c) For purposes of this section, an exception is substantially
10 amended if the amendment expands the scope of the exception to include
11 more records or information. An exception is not substantially amended if
12 the amendment narrows the scope of the exception.

13 (d) This section is not intended to repeal an exception that has been
14 amended following legislative review before the scheduled repeal of the
15 exception if the exception is not substantially amended as a result of the
16 review.

17 (e) In the year before the expiration of an exception, the revisor of
18 statutes shall certify to the president of the senate and the speaker of the
19 house of representatives, by July 15, the language and statutory citation of
20 each exception which will expire in the following year which meets the
21 criteria of an exception as defined in this section. Any exception that is not
22 identified and certified to the president of the senate and the speaker of the
23 house of representatives is not subject to legislative review and shall not
24 expire. If the revisor of statutes fails to certify an exception that the revisor
25 subsequently determines should have been certified, the revisor shall
26 include the exception in the following year's certification after that
27 determination.

28 (f) "Exception" means any provision of law which creates an
29 exception to disclosure or limits disclosure under the open records act
30 pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any
31 other provision of law.

32 (g) A provision of law which creates or amends an exception to
33 disclosure under the open records law shall not be subject to review and
34 expiration under this act if such provision:

- 35 (1) Is required by federal law;
36 (2) applies solely to the legislature or to the state court system;
37 (3) has been reviewed and continued in existence twice by the
38 legislature; or
39 (4) has been reviewed and continued in existence by the legislature
40 during the 2013 legislative session and thereafter.

41 (h) (1) The legislature shall review the exception before its scheduled
42 expiration and consider as part of the review process the following:

- 43 (A) What specific records are affected by the exception;

1 (B) whom does the exception uniquely affect, as opposed to the
2 general public;

3 (C) what is the identifiable public purpose or goal of the exception;

4 (D) whether the information contained in the records may be obtained
5 readily by alternative means and how it may be obtained;

6 (2) an exception may be created or maintained only if it serves an
7 identifiable public purpose and may be no broader than is necessary to
8 meet the public purpose it serves. An identifiable public purpose is served
9 if the legislature finds that the purpose is sufficiently compelling to
10 override the strong public policy of open government and cannot be
11 accomplished without the exception and if the exception:

12 (A) Allows the effective and efficient administration of a
13 governmental program, which administration would be significantly
14 impaired without the exception;

15 (B) protects information of a sensitive personal nature concerning
16 individuals, the release of which information would be defamatory to such
17 individuals or cause unwarranted damage to the good name or reputation
18 of such individuals or would jeopardize the safety of such individuals.
19 Only information that would identify the individuals may be excepted
20 under this paragraph; or

21 (C) protects information of a confidential nature concerning entities,
22 including, but not limited to, a formula, pattern, device, combination of
23 devices, or compilation of information which is used to protect or further a
24 business advantage over those who do not know or use it, the disclosure of
25 which information would injure the affected entity in the marketplace.

26 (3) Records made before the date of the expiration of an exception
27 shall be subject to disclosure as otherwise provided by law. In deciding
28 whether the records shall be made public, the legislature shall consider
29 whether the damage or loss to persons or entities uniquely affected by the
30 exception of the type specified in paragraph (2)(B) or (2)(C) of this
31 subsection (h) would occur if the records were made public.

32 (i) (1) Exceptions contained in the following statutes as continued in
33 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas
34 and which have been reviewed and continued in existence twice by the
35 legislature as provided in subsection (g) are hereby continued in existence:
36 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189,
37 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16a-2-304, 17-
38 1312e, 17-2227, 17-5832, 17-7511, 17-7514, 17-76,139, 19-4321, 21-
39 2511, 22-3711, 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312,
40 25-4161, 25-4165, 31-405, 34-251, 38-2212, 39-709b, 39-719e, 39-934,
41 39-1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,
42 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b,
43 40-3421, 40-3613, 40-3805, 40-4205, 44-510j, 44-550b, 44-594, 44-635,

1 44-714, 44-817, 44-1005, 44-1019, 45-221(a)(1) through (43), 46-256, 46-
2 259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427,
3 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-
4 3336, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-
5 1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-
6 1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-
7 1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a,
8 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922,
9 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-
10 67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203,
11 66-1220a, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-
12 5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-
13 50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804,
14 74-9805, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362,
15 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493,
16 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-
17 3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

18 (2) Exceptions contained in the following statutes as certified by the
19 revisor of statutes to the president of the senate and the speaker of the
20 house of representatives pursuant to subsection (e) and which have been
21 reviewed during the 2015 legislative session and continued in existence by
22 the legislature as provided in subsection (g) are hereby continued in
23 existence: 17-2036, 40-5301, 45-221(a)(45), (46) and (49), 48-16a10, 58-
24 4616, 60-3351, 72-972a, 74-50,217, ~~74-99d05~~ and 75-53,105.

25 (j) (1) Exceptions contained in the following statutes as continued in
26 existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas
27 and which have been reviewed and continued in existence twice by the
28 legislature as provided in subsection (g) are hereby continued in existence:
29 1-501, 9-1303, 12-4516a, 39-970, 65-525, 65-5117, 65-6016, 65-6017 and
30 74-7508.

31 (2) Exceptions contained in the following statutes as certified by the
32 revisor of statutes to the president of the senate and the speaker of the
33 house of representatives pursuant to subsection (e) during 2010 are hereby
34 continued in existence until July 1, 2016, at which time such exceptions
35 shall expire: 12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-
36 2326, 44-1132, 60-3333, 65-6154, 71-218, 75-457, 75-712c, 75-723 and
37 75-7c06.

38 (k) Exceptions contained in the following statutes as certified by the
39 revisor of statutes to the president of the senate and the speaker of the
40 house of representatives pursuant to subsection (e) and which have been
41 reviewed during the 2014 legislative session and continued in existence by
42 the legislature as provided in subsection (g) are hereby continued in
43 existence: 1-205, 2-2204, 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-

1 17,150, 12-2001, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-
2 2905, 41-2906, 44-706, 44-1518, 45-221(a)(44), (45), (46), (47) and (48),
3 50-6a11, 56-1a610, 56a-1204, 65-1,243, 65-16,104, 65-3239, 74-50,184,
4 74-8134, 74-99b06, 77-503a and 82a-2210.

5 (l) Exceptions contained in the following statutes as certified by the
6 revisor of statutes to the president of the senate and the speaker of the
7 house of representatives pursuant to subsection (e) during 2011 are hereby
8 continued in existence until July 1, 2017, at which time such exceptions
9 shall expire: 12-5711, 21-2511, 38-2313, 65-516, 74-8745, 74-8752, 74-
10 8772 and 75-7427.

11 (m) Exceptions contained in the following statutes as certified by the
12 revisor of statutes to the president of the senate and the speaker of the
13 house of representatives pursuant to subsection (e) during 2012 and which
14 have been reviewed during the 2013 legislative session and continued in
15 existence by the legislature as provided in subsection (g) are hereby
16 continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a,
17 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-
18 712 and 75-5366.

19 *{Sec. 3. K.S.A. 2015 Supp. 65-3031 is hereby amended to read as*
20 *follows: 65-3031. (a) In accordance with the requirements of the*
21 *environmental protection agency's rulemaking pursuant to docket EPA-*
22 *HQ-OAR-2013-0602, the secretary may develop and submit to the*
23 *environmental protection agency a state plan for compliance with the*
24 *regulation of carbon dioxide from any affected or existing electric*
25 *generating units pursuant to 42 U.S.C. § 7411. The secretary of health*
26 *and environment may establish separate standards of performance for*
27 *carbon dioxide emissions based upon: (1) The best system of emission*
28 *reduction that has been adequately demonstrated while considering the*
29 *cost of achieving such reduction;*

30 *(2) reductions in emissions of carbon dioxide that can reasonably*
31 *be achieved through measures taken at each electric generating unit;*
32 *and*

33 *(3) efficiency improvements to any affected electric generating unit*
34 *and other measures that can be undertaken at each electric generating*
35 *unit to reduce carbon dioxide emissions without any requirements for*
36 *fuel switching, co-firing with other fuels or limiting the utilization of the*
37 *unit.*

38 *(b) In establishing any standard of performance for any existing*
39 *electric generating unit pursuant to this section, the secretary may*
40 *consider alternative standards and metrics or may provide alternative*
41 *compliance schedules than those provided by federal rules or*
42 *regulations by evaluating: (1) Unreasonable costs of achieving an*
43 *emission limitation due to plant age, location or the design of an electric*

1 *generating unit;*

2 *(2) any unusual physical or compliance schedule difficulties or*
3 *impossibility of implementing emission reduction measures;*

4 *(3) the cost of applying the performance standard to an electric*
5 *generating unit;*

6 *(4) the remaining useful life of an electric generating unit;*

7 *(5) any economic or electric transmission and distribution impacts*
8 *resulting from closing the electric generating unit if compliance with the*
9 *performance standard is not possible; and*

10 *(6) the potential for a standard of performance relating to unit*
11 *efficiency, including any requirements for a new source review or the*
12 *application of a best available control technology emission limitation for*
13 *any criteria pollutant as a condition of receiving a permit or*
14 *authorization for the project.*

15 *(c) The secretary may implement such standards through flexible*
16 *regulatory mechanisms, including the averaging of emissions, emissions*
17 *trading or other alternative implementation measures that the secretary*
18 *determines to be in the interest of Kansas. The secretary may enter into*
19 *voluntary agreements with utilities that operate fossil-fuel based electric*
20 *generating units within Kansas to implement such carbon dioxide*
21 *emission standards. Such agreements may aggregate the carbon dioxide*
22 *emissions levels from electric resources in this state, including coal,*
23 *petroleum, natural gas or renewable energy resources as defined in*
24 *K.S.A. 2015 Supp. 66-1257, and amendments thereto, that are owned,*
25 *operated or utilized by power purchase agreements by utilities for*
26 *purposes of determining compliance with such carbon dioxide emission*
27 *standards.*

28 *(d) The secretary and the state corporation commission shall enter*
29 *into a memorandum of understanding concerning implementation of the*
30 *requirements and responsibilities under the Kansas air quality act.*

31 *(e) (1) The secretary shall submit to the clean power plan*
32 *implementation study committee:*

33 *(A) A plan to investigate, review and develop a state plan no later*
34 *than the first week of November 2015;*

35 *(B) information on any final rule adopted by the environmental*
36 *protection agency under docket EPA-HQ-OAR-2013-0602 no later than*
37 *February 1, 2016; and*

38 *(C) any information requested by the chairperson.*

39 *(2) The state corporation commission shall submit information to*
40 *the clean power plan implementation study committee concerning:*

41 *(A) Each utility's re-dispatch options along with the cost of each*
42 *option;*

43 *(B) the lowest possible cost re-dispatch options on a state-wide*

1 *basis; and*

2 *(C) the impact of each re-dispatch option on the reliability of*
3 *Kansas' integrated electric systems.*

4 *(f) The secretary shall present any proposed state plan proposed for*
5 *submission to the environmental protection agency to the clean power*
6 *plan implementation study committee for review and input pursuant to*
7 *K.S.A. 2015 Supp. 66-1285, and amendments thereto, at least 30 days*
8 *prior to submission of such a plan to the environmental protection*
9 *agency or any other federal agency. If a proposed plan is disapproved by*
10 *the clean power plan implementation study committee, the secretary*
11 *shall resubmit a revised plan to the study committee. The secretary may*
12 *submit any proposed plan to the environmental protection agency that*
13 *has been submitted to the study committee and that has not been*
14 *disapproved by the committee within 30 days of the committee receiving*
15 *such proposed plan.*

16 *(g) Notwithstanding review by the clean power plan implementation*
17 *study committee of the submission of a state plan to the environmental*
18 *protection agency, further action by the secretary to implement or*
19 *enforce the final approved state plan is dependent upon the final*
20 *adoption of the federal emission guidelines. If the federal emission*
21 *guidelines are not adopted or are adopted and subsequently suspended,*
22 *vacated, in whole or in part, or held to not be in accordance with the*
23 *law, the secretary shall suspend or terminate, as appropriate, further*
24 *action to implement or enforce the state plan.*

25 *(h) Notwithstanding any other provision of law, prior to submitting*
26 *any state plan to the environmental protection agency, the secretary*
27 *shall: (1) Submit such state plan as proposed rules and regulations*
28 *pursuant to K.S.A. 77-415 et seq., and amendments thereto. Such*
29 *submission shall be expedited by any agency reviewing such proposed*
30 *rules and regulations pursuant to K.S.A. 77-415 et seq., and*
31 *amendments thereto;*

32 *(2) request a review of the proposed state plan by the office of the*
33 *attorney general. The attorney general review may certify to the*
34 *secretary that the plan will not hinder, undermine or in any way harm*
35 *the position of the state of Kansas in any current or pending litigation*
36 *relating to the environmental protection agency docket EPA-HQ-OAR-*
37 *2013-0602. The attorney general shall also review the proposed state*
38 *plan concerning any impacts on the protections guaranteed by the*
39 *constitutions of the United States or the state of Kansas; and*

40 *(3) not submit a state plan if the attorney general review indicates*
41 *that the proposed plan would adversely impact the state's legal position*
42 *in any current or pending litigation relating to the environmental*
43 *protection agency docket EPA-HQ-OAR-2013-0602 or if the attorney*

1 *general review indicates that the proposed state plan adversely impacts*
2 *protections guaranteed by the constitutions of the United States or the*
3 *state of Kansas.*

4 (i) *The secretary shall be responsible for submitting a state plan to*
5 *the environmental protection agency in a timely manner.*
6 *Notwithstanding any other provision of this act, the secretary shall*
7 *prepare and submit any request for an extension of time to file a state*
8 *plan, if necessary, an interim state plan or a final state plan to the*
9 *environmental protection agency. Any interim or final state plan shall be*
10 *submitted by the secretary no less than four calendar days prior to the*
11 *federal submission deadline, or extended submission deadline,*
12 *established by the environmental protection agency. Any final state plan*
13 *submitted to the environmental protection agency may only be submitted*
14 *if the secretary has previously submitted such plan for review by the*
15 *clean power plan implementation study committee pursuant to this act.*

16 (j) *Due to the February 9, 2016, stay issued by the United States*
17 *supreme court, all state agency activities in furtherance of the*
18 *environmental protection agency docket EPA-HQ-OAR-2013-0602,*
19 *codified as 40 C.F.R. part 60, shall be suspended until the stay is lifted.*

20 (k) *This section shall be part of and supplemental to the Kansas*
21 *air quality act.*

22 Sec. ~~3~~. *{4.}* K.S.A. 2015 Supp. 45-229, ~~{65-3031,}~~ 74-99d01, 74-
23 99d02, 74-99d03, 74-99d04, 74-99d05, 74-99d06, 74-99d07, 74-99d08,
24 74-99d10, 74-99d11, 74-99d12, 74-99d13 and 74-99d14 are hereby
25 repealed.

26 Sec. ~~4~~. *{5.}* This act shall take effect and be in force from and after its
27 publication in the Kansas register.

, studies and
investigations

preparation of an initial submittal or the
evaluation of any options for the submission
of a final state plan pursuant to the

Nothing in this subsection shall be construed so as to
restrict the ability of a state agency from communicating
with, or providing information to, other state agencies in
furtherance of any of the agency's statutory obligations.