



Testimony of the Kansas City Board of Public Utilities
Senate Bill 170
Presented to the Kansas Legislature Senate Utilities Committee
February 19, 2015

Chairman Olson and members of the Committee, thank you for this opportunity to present written testimony in opposition to Senate Bill 170: An act concerning electric utilities relating to the regulation of carbon dioxide emissions.

The effect of SB 170 would be to relinquish to the U.S. Environmental Protection Agency (EPA) all control over the regulation of carbon dioxide emissions from electric generation in the State of Kansas: A result not in the best interests of any home, business or industry in Kansas. BPU opposes SB 170 for the following, as well as other reasons:

1. SB 170 directly eliminates opportunities that the State of Kansas has pursuant to the federal Clean Air Act, to develop and implement a Kansas plan for implementation of any final version of EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) (Carbon Rule). The Secretary would have no funds or authority to prepare a Kansas plan in an effective and timely manner thus relinquishing all control to the EPA.
2. SB 170 prohibits the Secretary of the Kansas Department of Health and Environment from doing the work that the Legislature has mandated that the Secretary do in the Kansas Air Quality Act: "The responsibility for air quality conservation and control of air pollution is hereby placed with the secretary of health and environment. The secretary shall administer this act through the division of environment." K.S.A. 65-3003. "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." K.S.A. 65-3005(b)(1). SB 170 would stand on its head the long-standing authorities of the secretary.
3. EPA's Carbon Rule is only proposed at this time. Until a rule is promulgated any effective legislative action is premature. As a practical matter, the final rule requirements could be considerably different than those of the proposed rule thus making any legislative action a crystal ball exercise. A final rule could be delayed for a time sufficient to lead to fundamental changes in the rule or to elimination of the rule.

4. SB 170 is riddled with unnecessary procedures, unrealistic timelines, and dubious grants of jurisdiction to various entities. For example, the Secretary is prohibited from acting AT ALL until the completion of judicial review of the Carbon Rule. Judicial review of EPA rules takes years. If a rule is not stayed pending judicial review all impacted parties still must implement and comply with the rule pending review. This alone guarantees that EPA will prepare the Kansas plan and will be busy implementing that plan against Kansas electric utilities while the Secretary's hands are tied by SB 170.

BPU encourages this Committee to refrain from action that would hinder KDHE from preparing a state plan for implementation of any final Carbon Rule and BPU encourages this Committee to empower the KDHE with funding and resources needed to best serve Kansas in response to any final Carbon Rule.

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