

*As Amended by Senate Committee*

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**As Further Amended by House Committee**

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**As Amended by House Committee**

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*Session of 2015*

**HOUSE BILL No. 2233**

By Committee on Energy and Environment

2-4

1 AN ACT concerning utilities; relating to electric generating units and  
2 carbon dioxide emission standards; concerning the establishment of  
3 state performance standards, *legislative review*; state corporation  
4 commission; secretary of health and environment; *creating the clean*  
5 *power plan implementation study committee*; amending K.S.A. 2014  
6 Supp. 65-3031 and repealing the existing section.  
7

8 WHEREAS, The United States environmental protection agency has  
9 proposed a carbon dioxide emission standard that requires the state of  
10 Kansas to comply with a state-wide emission standard rather than  
11 requiring individual utilities to meet a specific emission standard on a  
12 generating unit basis. In determining a carbon dioxide emission  
13 standard for Kansas, the environmental protection agency has elected to  
14 require states to re-dispatch coal-fired electric generating units to  
15 natural gas-fired combined cycle generation units and renewable  
16 generating resources as well as the use of energy efficiency and  
17 demand-side management resources. Because the environmental  
18 protection agency's approach to setting a carbon dioxide emission  
19 standard crosses jurisdictional authorities, and due to the complexity of  
20 re-dispatching the integrated electric system in the state of Kansas  
21 while maintaining reliable electric service and reasonable electric rates  
22 for ratepayers, both the Kansas department of health and environment  
23 and the state corporation commission will need to provide their  
24 respective expertise in order to efficiently and effectively develop a  
25 cost-effective and reliable compliance plan. This act shall be called the  
26 Kansas electric ratepayer protection act.  
27

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

29 Section 1. K.S.A. 2014 Supp. 65-3031 is hereby amended to read as  
30 follows: 65-3031. (a) ~~For all coal-fired and natural gas electric generating~~  
31 ~~units that are affected units pursuant to 42 U.S.C. § 7411, as in effect on~~  
32 ~~the effective date of this act, that have been constructed or have received a~~

1 prevention of significant deterioration permit by July 1, 2014, **In**  
2 **accordance with the requirements of the environmental protection**  
3 **agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602,**  
4 **the secretary may develop and submit to the environmental protection**  
5 **agency a state plan for compliance with the regulation of carbon**  
6 **dioxide from any affected or existing electric generating units**  
7 **pursuant to 42 U.S.C. § 7411.** The secretary of health and environment  
8 may establish separate standards of performance for carbon dioxide  
9 emissions based upon: (1) The best system of emission reduction that has  
10 been adequately demonstrated while considering the cost of achieving  
11 such reduction;

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

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

18 (b) In establishing any standard of performance for any existing  
19 electric generating unit pursuant to this section, the secretary may consider  
20 alternative standards and metrics or may provide alternative compliance  
21 schedules than those provided by federal rules or regulations by  
22 evaluating: (1) Unreasonable costs of achieving an emission limitation due  
23 to plant age, location or the design of an electric generating unit;

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

26 (3) the cost of applying the performance standard to an electric  
27 generating unit;

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

29 (5) any economic or electric transmission and distribution impacts  
30 resulting from closing the electric generating unit if compliance with the  
31 performance standard is not possible; and

32 (6) the potential for a standard of performance relating to unit  
33 efficiency, including any requirements for a new source review or the  
34 application of a best available control technology emission limitation for  
35 any criteria pollutant as a condition of receiving a permit or authorization  
36 for the project.

37 (c) ~~The secretary may implement such standards through flexible~~  
38 ~~regulatory mechanisms, including the averaging of emissions, emissions~~  
39 ~~trading or other alternative implementation measures **a state plan through**~~  
40 ~~**regulatory mechanisms that may include administrative regulations,**~~  
41 ~~**permits, agreements or other flexible regulatory measures such**~~  
42 ~~**standards through flexible regulatory mechanisms, including the**~~  
43 ~~**averaging of emissions, emissions trading or other alternative**~~

1 *implementation measures* that the secretary determines to be in the  
2 interest of Kansas. The secretary ~~shall not implement a permit~~  
3 ~~participation in an organized carbon emission trading mechanism~~  
4 ~~market without first obtaining specific statutory authority for the~~  
5 ~~mechanism. The secretary may enter into voluntary agreements with~~  
6 ~~utilities that operate fossil-fuel based electric generating units within~~  
7 ~~Kansas to implement these carbon dioxide emission standards. Such~~  
8 ~~agreements may aggregate the carbon dioxide emissions levels from~~  
9 ~~electric resources in this state, including coal, petroleum, natural gas or~~  
10 ~~renewable energy resources as defined in K.S.A. 66-1257, and~~  
11 ~~amendments thereto, that are owned, operated or utilized by power~~  
12 ~~purchase agreements by utilities for purposes of determining compliance~~  
13 ~~with such carbon dioxide emission standards. Such agreements shall not~~  
14 ~~be effective until the secretary has given notice to the state corporation~~  
15 ~~commission, held a hearing pursuant to K.S.A. 77-501 et seq., and~~  
16 ~~amendments thereto, and issued an order which adopts the state~~  
17 ~~corporation commission's order pursuant to subsection (d) may enter into~~  
18 ~~voluntary agreements with utilities that operate fossil-fuel based electric~~  
19 ~~generating units within Kansas to implement such carbon dioxide~~  
20 ~~emission standards. Such agreements may aggregate the carbon dioxide~~  
21 ~~emissions levels from electric resources in this state, including coal,~~  
22 ~~petroleum, natural gas or renewable energy resources as defined in~~  
23 ~~K.S.A. 2014 Supp. 66-1257, and amendments thereto, that are owned,~~  
24 ~~operated or utilized by power purchase agreements by utilities for~~  
25 ~~purposes of determining compliance with such carbon dioxide emission~~  
26 ~~standards. In order to achieve a mass-based or rate-based goal,~~  
27 ~~nothing in this act shall be construed to prohibit a Kansas utility: (1)~~  
28 ~~with multiple affected units in one or more states from sharing,~~  
29 ~~aggregating or purchasing emissions among such utility's units; or~~  
30 ~~(2) from sharing, aggregating or purchasing emissions between~~  
31 ~~other Kansas utilities with affected units.~~

32 *(d) Before establishing any standard of performance for any affected*  
33 *or existing jurisdictional electric generating unit or flexible regulatory*  
34 *mechanism pursuant to this section, the secretary shall give notice to the*  
35 *state corporation commission and adopt the order of the commission. In*  
36 *making a recommendation to the secretary, the commission shall: (1)*  
37 *Conduct any investigations necessary to determine each jurisdictional*  
38 *utility's re-dispatch options along with the cost of each option;*

39 *(2) conduct any investigations necessary to* ~~conduct a joint~~  
40 ~~investigation with the state corporation commission pursuant to~~  
41 ~~K.S.A. 65-3005 and 66-106, and amendments thereto, and hold a joint~~  
42 ~~hearing pursuant to procedures under K.S.A. 77-501 et seq., and~~  
43 ~~amendments thereto, as applied to the state corporation commission.~~

1 ~~In establishing any standard of performance or flexible regulatory~~  
2 ~~mechanism pursuant to this section, the secretary and the state~~  
3 ~~corporation commission shall: (1) Exercise the secretary's and~~  
4 ~~commission's respective existing statutory authority over the affected~~  
5 ~~utilities;~~

6 ~~(2) determine each utility's re-dispatch options along with the~~  
7 ~~cost of each option;~~

8 ~~(3) determine the lowest possible cost re-dispatch options on a state-~~  
9 ~~wide basis;~~

10 ~~(3) (4) ensure that the recommended options maintain any option~~  
11 ~~selected maintains the reliability of Kansas' integrated electric systems;~~

12 ~~(4) issue an order, within 300 days of receiving notice by the~~  
13 ~~secretary, which provides a detailed explanation of the commission's~~  
14 ~~findings and recommendations. Nothing in this subsection shall preclude~~  
15 ~~all parties and the commission from agreeing to extend the 300-day~~  
16 ~~period. The commission shall expeditiously conduct any such investigation~~  
17 ~~as covered within this subsection; and~~

18 ~~(5) provide the secretary a copy of the commission's order along with~~  
19 ~~any evidence requested by the secretary.~~

20 ~~(e) In any hearing held pursuant to subsection (c), the commission~~  
21 ~~shall function as an official intervenor and may make application for a~~  
22 ~~rehearing or seek judicial review of any order or decision of the secretary~~  
23 ~~issued pursuant to this act.~~

24 ~~(5) issue a joint final order establishing the compliance goal and~~  
25 ~~defining the regulatory mechanisms for the state plan, which provides~~  
26 ~~a detailed explanation of the joint findings; and~~

27 ~~(6) issue a joint interim order within 180 days of initiation of the~~  
28 ~~joint investigation, if necessary to submit a state plan within any~~  
29 ~~deadline imposed by the environmental protection agency. If a joint~~  
30 ~~interim order is issued, it shall establish the compliance goal and~~  
31 ~~define the regulatory mechanisms for the state plan. The secretary~~  
32 ~~shall may request an extension upon submission of the state plan of~~  
33 ~~the time limit for submitting a state plan, as necessary.~~

34 ~~(c) After issuance of a joint interim order, the secretary shall~~  
35 ~~promulgate and submit a state plan establishing the compliance goal~~  
36 ~~and regulatory mechanisms approved in the joint order. If the findings~~  
37 ~~of a joint final order differ from those of the joint interim order, the~~  
38 ~~secretary shall promulgate and submit modifications to the state plan~~  
39 ~~to the environmental protection agency by the department to~~  
40 ~~incorporate the findings approved in that joint final order~~

41 ~~(d) The secretary and the state corporation commission shall enter~~  
42 ~~into a memorandum of understanding concerning implementation of the~~  
43 ~~requirements and responsibilities under the Kansas air quality act.~~

1       ~~(f) (e) (1) The secretary and the state corporation commission~~  
 2       ~~shall submit the state plan to the legislature concurrent with the start~~  
 3       ~~of the public notice period for the state plan. The state plan will be~~  
 4       ~~submitted to the senate committee on utilities and the house of~~  
 5       ~~representatives committee on energy and environment committees or~~  
 6       ~~other committees designated by the legislative coordinating council for~~  
 7       ~~review and approval. If the legislature is not in session when the plan~~  
 8       ~~is submitted for review, the legislative coordinating council will~~  
 9       ~~designate an alternate joint committee to review the state plan. The~~  
 10       ~~committees shall complete their respective reviews within 60 days. The~~  
 11       ~~state plan shall be considered approved unless both committees vote to~~  
 12       ~~disapprove the plan within the 60-day review period. If a committee~~  
 13       ~~votes to disapprove the plan, the committee shall indicate the reasons~~  
 14       ~~for such disapproval. The secretary shall make any necessary changes~~  
 15       ~~to the proposed state plan and resubmit the plan for approval by the~~  
 16       ~~committees. The committees shall each take action to approve or~~  
 17       ~~disapprove any resubmitted plan within 30 days of receiving any~~  
 18       ~~resubmitted plan or else the plan will be considered approved as~~  
 19       ~~submitted to the senate committee on utilities and the house~~  
 20       ~~committee on energy and environment clean power plan~~  
 21       ~~implementation study committee:~~

22       ~~(1)(A)~~ A plan to investigate, review and develop a state plan no  
 23       later than November 1, 2015; ~~and~~

24       ~~(2)(B)~~ information on any final rule adopted by the  
 25       environmental protection agency under docket EPA-HQ-OAR-2013-  
 26       0602 no later than February 1, 2016; *and*

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

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

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

32       (B) *the lowest possible cost re-dispatch options on a state-wide*  
 33       *basis; and*

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

36       ~~(g) (f) The secretary shall present any proposed interim or final~~  
 37       ~~state plan proposed for submission to the environmental protection~~  
 38       ~~agency to a joint meeting of the senate committee on utilities and the~~  
 39       ~~house committee on energy and environment, or an alternate joint~~  
 40       ~~committee designated by the legislative coordinating council if the~~  
 41       ~~legislature is not in session, the clean power plan implementation study~~  
 42       ~~committee for review and input pursuant to section 2, and amendments~~  
 43       ~~thereto, at least 30 days prior to submission of such a plan to the~~

1 environmental protection agency or any other federal agency. ~~This~~  
2 ~~meeting shall take place at least 45 days prior to the planned~~  
3 ~~submission and The committee shall provide comments to the~~  
4 ~~secretary within 15 days after the meeting. In the event a final rule is~~  
5 ~~not issued by the environmental protection agency pursuant to~~  
6 ~~docket EPA-HQ-OAR-2013-0602, or the issuance of a final rule is~~  
7 ~~delayed, the secretary shall notify the appropriate chairs of the~~  
8 ~~legislative committees~~ *If a proposed plan is disapproved by the clean*  
9 *power plan implementation study committee, the secretary shall*  
10 *resubmit a revised plan to the study committee. The secretary may*  
11 *submit any proposed plan to the environmental protection agency that*  
12 *has been submitted to the study committee and that has not been*  
13 *disapproved by the committee within 30 days of the committee receiving*  
14 *such proposed plan.*

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

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

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

42 *(3) not submit a state implementation plan if the attorney general*  
43 *review indicates that the proposed plan would adversely impact the*

1 *state's legal position in any current or pending litigation relating to the*  
2 *environmental protection agency docket EPA-HQ-OAR-2013-0602 or if*  
3 *the attorney general review indicates that the proposed state plan*  
4 *adversely impacts protections guaranteed by the constitutions of the*  
5 *United States or the state of Kansas.*

6 *(i) The secretary shall be responsible for submitting a state*  
7 *implementation plan to the environmental protection agency in a timely*  
8 *manner. Notwithstanding any other provision of this act, the secretary*  
9 *shall prepare and submit a state plan to the environmental protection*  
10 *agency four calendar days prior to the federal submission deadline*  
11 *established by the environmental protection agency if the secretary has*  
12 *previously submitted such plan for review by the clean power plan*  
13 *implementation study committee pursuant to this act.*

14 ~~(d) (f) (h) (i) (j)~~ This section shall be part of and supplemental to the  
15 Kansas air quality act.

16 *New Sec. 2. (a) (1) There is hereby established the clean power plan*  
17 *implementation study committee. The committee shall hold*  
18 *informational hearings and receive updates from the department of*  
19 *health and environment, the state corporation commission and the*  
20 *attorney general about the implications of the adoption of a state*  
21 *implementation plan pursuant to docket EPA-HQ-OAR-2013-0602*  
22 *concerning the impact to: (A) Electric ratepayers; (B) electric utilities;*  
23 *(C) the reliability of the electric grid in Kansas; and (D) the overall*  
24 *sovereignty of the state.*

25 *(2) Upon development of a state implementation plan pursuant to*  
26 *K.S.A. 2014 Supp. 65-3031, and amendments thereto, the secretary of*  
27 *health and environment shall submit the plan to the study committee for*  
28 *review. Within 30 days of receiving any proposed state implementation*  
29 *plan, the committee shall hold a committee meeting and review the*  
30 *impact of the plan pursuant to this section and may approve or*  
31 *disapprove the submission of the plan. If the study committee*  
32 *disapproves the submission of the plan, the committee shall provide the*  
33 *secretary the reasons for such disapproval.*

34 *(b) (1) The study committee shall be composed of 11 voting*  
35 *members. Five members shall be from the senate committee on utilities*  
36 *as follows: (A) The chairperson, vice-chairperson and ranking minority*  
37 *member; and (B) two members appointed by the president of the senate.*

38 *(2) Six members shall be from the house committee on energy and*  
39 *environment as follows: (A) The chairperson, vice-chairperson and*  
40 *ranking minority member; and (B) three members appointed by the*  
41 *speaker of the house of representatives.*

42 *(3) A quorum of the clean power plan implementation study*  
43 *committee shall be six members. All actions of the committee shall be*

1 *taken by a majority of all of the members of the committee. Any vacancy*  
2 *in the membership of the committee shall be filled by appointment in the*  
3 *same manner prescribed by this section for the original appointment.*

4 *(c) Members shall be appointed to the study committee on or before*  
5 *July 1, 2015, for a term ending on June 30, 2017. On and after the first*  
6 *day of the regular legislative session in odd-numbered years, the*  
7 *chairperson of the study committee shall be the chairperson of the house*  
8 *committee on energy and environment and the vice-chairperson of the*  
9 *study committee shall be the chairperson of the senate committee on*  
10 *utilities and, after the first day of the regular legislative session in even-*  
11 *numbered years, the chairperson of the study committee shall be the*  
12 *chairperson of the senate committee on utilities and the vice-chairperson*  
13 *of the study committee shall be the chairperson of the house committee*  
14 *on energy and environment. The chairperson and vice-chairperson of*  
15 *the study committee shall serve in such capacities until the first day of*  
16 *the regular legislative session in the ensuing year. The vice-chairperson*  
17 *shall exercise all of the powers of the chairperson in the absence of the*  
18 *chairperson. The first meeting of the study committee shall be called by*  
19 *the chairperson of the committee following the conclusion of the 2015*  
20 *regular session of the Kansas legislature. The committee shall have the*  
21 *authority to meet at any time and at any place within the state on the call*  
22 *of the chairperson.*

23 *(d) The provisions of the acts contained in article 12 of chapter 46*  
24 *of the Kansas Statutes Annotated, and amendments thereto, applicable*  
25 *to special committees shall apply to the clean power plan implementation*  
26 *study committee to the extent that the same do not conflict with the*  
27 *specific provisions of this act applicable to the study committee.*

28 *(e) Members of the clean power plan implementation study*  
29 *committee shall receive compensation, travel expenses and subsistence*  
30 *expenses as provided in K.S.A. 75-3212, and amendments thereto, when*  
31 *attending meetings of the committee.*

32 *(f) The staff of the office of the revisor of statutes, the legislative*  
33 *research department and the division of legislative administrative*  
34 *services shall provide such assistance as may be requested by the study*  
35 *committee.*

36 *(g) The provisions of this section shall expire on June 30, 2017.*

37 Sec. 3. K.S.A. 2014 Supp. 65-3031 is hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the Kansas register.