

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2233

As Further Amended by House Committee on
Energy and Environment

Brief*

HB 2233 would establish the procedure for developing and submitting a state plan (Plan) to the federal Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan (CPP) rule.

Authority of the Secretary of Health and Environment

The bill would authorize the Secretary of Health and Environment (Secretary) to develop and submit a Plan to the EPA for compliance with the requirements of the proposed federal CPP rule.

The Secretary would be authorized to implement the Plan through regulatory mechanisms including administrative regulations, permits, agreements, or other other flexible measures, but would be prohibited from permitting participation in an organized carbon emission trading market without first obtaining specific statutory authority. The bill would not prohibit trading between and within Kansas utilities in order to achieve a mass-based or rate-based goal. Specifically, the bill would not prohibit a Kansas utility:

- With multiple affected units in one or more states from sharing, aggregating, or purchasing emissions among such utility's units; or

*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>

- From sharing, aggregating, or purchasing emissions between other Kansas utilities with affected units.

Mandatory Joint Investigation by the Secretary of Health and Environment and the Kansas Corporation Commission

Before establishing any standard of performance for any affected or existing jurisdictional electric generating unit or flexible regulatory mechanism, the Secretary would be required to conduct a joint investigation and hold a joint hearing with the Kansas Corporation Commission (KCC). In establishing standards or regulatory mechanisms the parties would be required to:

- Exercise the Secretary's and KCC's respective existing statutory authority over the affected utilities;
- Determine each utility's re-dispatch options along with the cost of each option;
- Determine the lowest possible cost re-dispatch options on a statewide basis;
- Ensure any option selected maintains the reliability of Kansas' integrated electric systems;
- Issue a joint final order establishing the compliance goal and defining the regulatory mechanisms for the Plan; and
- Issue a joint interim order within 180 days of initiation of the joint investigation, if it is necessary to submit a Plan within any deadline imposed by the EPA. If a joint interim order is issued, it would be required to establish the compliance goal and define the regulatory mechanisms for the Plan. The

Secretary would be allowed to request an extension of the time limit for submitting the Plan to the EPA.

Legislative Review of the State Plan; Submission to the EPA

After issuing a joint interim order, the Secretary would promulgate and submit a Plan establishing the compliance goal and regulatory mechanisms approved in the joint order. If the joint interim order and joint final order differ, the Secretary would be required to promulgate and submit the modifications to the Plan to the EPA.

The Secretary and the KCC would be required to submit to the Senate Committee on Utilities and the House Committee on Energy and Environment a plan to investigate, review, and develop a Plan no later than November 1, 2015, and information on any final CPP rule adopted by the EPA no later than February 1, 2016.

The Secretary would be required to submit a proposed interim or final Plan to a joint meeting of the Senate Utilities Committee and the House Energy and Environment Committee for review and input prior to submission of the plan to the EPA. If the Legislature is not in session when the plan is submitted, the Legislative Coordinating Council would designate a joint committee to conduct the review.

The joint meeting would be required to convene at least 45 days before submission of the Plan to the EPA and the Committee would be required to provide comments to the Secretary within 15 days after the meeting.

The Secretary would be required to provide notice to the chairpersons of the appropriate legislative committees if the CPP rule is delayed or not issued.

If federal emission guidelines were not adopted, or were adopted and subsequently suspended or vacated in whole or part, the Secretary would be prohibited from carrying out the Plan.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Energy and Environment.

In the House Committee hearing, a Commissioner of the KCC provided testimony in favor of the bill, along with the Director of the Utilities Division, KCC. Written proponent testimony was provided by the Kansas Chamber of Commerce.

Testimony in opposition to the bill was provided by representatives of the Kansas Department of Health and Environment, Kansans for Clean Energy, and Sunflower Electric Power Corporation which also spoke on behalf of Mid-Kansas Electric Company, Midwest Energy, and the Kansas Electric Cooperatives.

Neutral testimony was provided by representatives of Kansas Electric Power Cooperative, Inc. and KCP&L, which also spoke on behalf of Westar Energy and Empire District Electric. Kansas City BPU provided written testimony.

On February 25, 2015 the House Committee made numerous amendments to the bill, including:

- Authorizing the Secretary to develop and submit a Plan to the EPA;
- Authorizing the Secretary to implement a Plan through various regulatory mechanisms;

- Prohibiting the Secretary from permitting participation in an organized carbon emission trading market without specific statutory authority, but allowing Kansas utilities to aggregate, share, or purchase emissions within a utility's units or between Kansas utilities to achieve a mass-based or rate-based goal;
- Requiring the Secretary and KCC to conduct a joint investigation and to hold a joint hearing on any Plan recommendations;
- Requiring the Secretary and KCC to issue a joint final order or joint interim order establishing and defining the state plan;
- Requiring the Secretary to submit the Plan to legislative committees for review and approval; and
- Prohibiting the Secretary from carrying out the Plan if federal emission guidelines are not adopted or are adopted and subsequently suspended or vacated in whole or in part.

On February 26, 2015, the bill was referred to the House Committee on Appropriations and then was re-referred to the House Committee on Energy and Environment on March 12, 2015.

On March 19, 2015, the House Committee further amended the bill by allowing, instead of requiring, the Secretary to request an extension from the EPA to submit the Plan and inserting the requirement for the legislative committees to provide input instead of approval of the Plan.

The House Committee also made the following amendments on March 19:

- The Secretary and the KCC would be required to submit to the Senate Committee on Utilities and the House Committee on Energy and Environment:
 - A plan to investigate, review, and develop a Plan no later than November 1, 2015; and
 - Information on any final rule adopted by the EPA regarding the CPP no later than February 1, 2016;
- The Secretary would be required to submit the proposed Plan to a joint meeting of the Senate Utilities Committee and the House Energy and Environment Committee instead of submitting the Plan to the committees separately;
- The timeline for the joint meeting to convene and the committees to offer comments would be established; and
- The Secretary would be required to provide notice to the chairpersons of the legislative committees if the CPP rule is delayed or not issued.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the KCC indicates passage of the bill would increase FY 2016 fee fund expenditures in the range of \$400,000 to \$500,000 to hire outside consultants. The consultants would evaluate re-dispatch models submitted to the KCC by the Southwest Power Pool and other utilities. The fiscal effect of the bill for KDHE would be negligible, because any additional work required by the bill would be absorbed within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.