

SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 151

As Amended by Senate Committee on Utilities

Brief*

SB 151, as amended, would establish the procedure for submitting a state plan to the federal Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan rule and would create the Clean Power Plan Implementation Study Committee.

Procedure for Submitting a State Plan

Secretary of Health and Environment

The bill would allow the Secretary of Health and Environment (Secretary) to develop and submit a state plan to the EPA for compliance with the requirements of the (proposed) federal Clean Power Plan rule. The Secretary would be allowed to implement the state plan through various regulatory mechanisms listed in the bill.

The Secretary would be prohibited from permitting participation in an organized carbon emission trading market without first obtaining specific statutory authority; however, the bill would not prohibit a Kansas utility with multiple affected units from aggregating emissions between its units to achieve a mass-based or rate-based goal.

*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>

*Secretary of Health and Environment and Kansas
Corporation Commission Joint Investigation*

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 with the Kansas Corporation Commission (KCC) 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 state-wide 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 state plan; and
- Issue a joint interim order, including the compliance goal and defined regulatory mechanisms for the state plan, within 180 days of initiation of the joint investigation, if it is necessary to submit a state plan within any deadline imposed by the EPA. Upon submission, the Secretary would be required to request an extension.

Submission of the State Plan

After issuing a joint interim order, the Secretary would promulgate and submit a state plan establishing the compliance goal and regulatory mechanisms approved in the joint order. If any differences occur between the joint interim

order and joint final order, the Secretary would be required to submit the modifications to the state plan to the EPA.

The Secretary would be required to submit the state plan to the Clean Power Plan Implementation Study Committee for review and approval at the start of the public notice period for the state plan.

Clean Power Plan Implementation Study Committee

The bill would create the Clean Power Plan Implementation Study Committee (Committee). The Committee would sunset on June 30, 2017.

Committee Duties

The Committee would be authorized to hold informational hearings and receive updates from the Kansas Department of Health and Environment (KDHE), KCC, and the Attorney General regarding the implications of adopting a state implementation plan for the (proposed) federal Clean Power Plan rule, concerning the impact on:

- Electric ratepayers;
- Electric utilities;
- Reliability of the electric grid in Kansas; and
- Overall sovereignty of the State.

The Secretary would be required to submit the state plan to the Committee for review. After reviewing the impact of the plan, the Committee could approve or disapprove the submission of the plan. If the Committee approves the plan, the Secretary would be authorized to submit the plan to the EPA. If the Committee disapproves, the Chairperson of the Committee would be required to submit a petition to call a

Special Session of the Legislature to review the submission of the plan.

Committee Members

The Committee would be composed of 11 voting members, as follows:

- Five members from the Senate Committee on Utilities, including the Chairperson, Vice-chairperson, and Ranking Minority Member, and two members appointed by the President of the Senate; and
- Six members from the House Committee on Energy and Environment, including the Chairperson, Vice-chairperson, and Ranking Minority Member, and three members appointed by the Speaker of the House.

The bill would establish a quorum of the Committee to be six members, all actions taken by the Committee would require a majority of the Committee members, and any vacancy in the Committee membership would be filled by appointment in the same manner as the original appointment.

Members would be appointed to the Committee for a two-year term, beginning July 1, 2015, and ending June 30, 2017. The Chairperson of the Committee would be the Chairperson of the Senate Committee during odd-numbered years and the House Committee during even-numbered years. The Vice-chairperson in each year would be the House or Senate Chairperson not seated as Chairperson of the Committee.

The first meeting of the Committee would be called by the Chairperson of the Committee following the conclusion of the 2015 Legislative Session.

Committee members would be authorized to receive compensation, travel expenses, and subsistence expenses as provided in existing law. Staff of the Office of Revisor of Statutes, Legislative Research Department, and Division of Legislative Administrative Services would provide assistance as requested by the Committee.

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

Background

The bill was introduced by the Senate Committee on Utilities.

A Commissioner of the KCC provided testimony in the favor of the bill, along with the Director of the Utilities Division, KCC. Written proponent testimony was provided by the Kansas Chamber of Commerce.

Providing testimony in opposition to the bill were representatives of the KDHE, Kansans for Clean Energy, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, Midwest Energy, and the Kansas Electric Cooperatives.

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

The Senate Committee made several amendments to the bill, including:

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

- Allowing Kansas utilities with multiple affected units to aggregate, share, or purchase emissions between units in-state or out-of-state 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 state 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 state plan to the Committee for review and approval; and
- Establishing the Committee.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states 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*.