

SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 170

As Amended by Senate Committee on Utilities

Brief*

SB 170, as amended, would create new law authorizing the Kansas Corporation Commission (KCC) and the Secretary of Health and Environment (Secretary) to examine the implications of the proposed federal Clean Power Plan rule, but would prohibit the KCC and the Secretary from preparing, drafting, submitting, or implementing an implementation plan or spending any funds to develop a plan until the completion of judicial review, as determined by the KCC and the Secretary, regarding the legality of the federal regulation for existing electric generating units.

Prior to submitting a state implementation plan (SIP) to the federal Environmental Protection Agency (EPA), the Secretary would be required to submit the SIP to the following entities:

- Senate Committee on Utilities and the House Committee on Energy and Environment or, if the Legislature is not in session, any special committee created by the Legislative Coordinating Council to address electricity or utilities issues, which would review the impact of the SIP and the implementation of the proposed federal rule on the affordability and reliability of the electric system for Kansas ratepayers and submit a report including the findings and approval of the SIP to the Legislature; and

*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>

- The KCC and the Federal Energy Regulatory Commission (FERC) to certify that implementation of the proposed rule would still permit electric utilities in Kansas to meet the reliability standards established by the FERC.

The KCC and the Kansas Department of Health and Environment (KDHE), in performing a review of any SIP developed in response to the proposed federal Clean Power Plan rule, would be required to:

- Condition any decision related to electricity generation and distribution on least-cost proposals that comply with the federal Clean Air Act;
- Require that all existing electric generating units be operated in accordance with the units' design parameters and in a way that would ensure operation consistent with the initial design life of a unit at the time it was constructed;
- Cap non-fuel rate increases associated with greenhouse gas regulations at 1.5 percent; and
- Not allow electric generating units to be retired prior to a unit's engineering lifetime, if the unit is necessary to maintain the grid reliability specified by the FERC or unless the owners of the unit have fully recouped the cost of construction and financing, the replacement generation results in lower costs to ratepayers, and there is enough replacement capacity to meet dispatchable capacity of the unit to be retired.

The bill would require final adoption of the federal emission guidelines before the Secretary could implement or enforce the final approved SIP. If the federal emission guidelines are not adopted or are adopted in a different form, the Secretary would be required to suspend or end further action to implement or enforce the SIP.

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

Background

The bill was introduced by the Senate Committee on Utilities.

Proponents included a representative of Americans for Prosperity and a regulatory attorney from Wilkinson Barker Knauer, LLP, a law firm based in Denver, Colorado. A representative of the Kansas Chamber of Commerce provided written testimony in favor of the bill. Proponents stated the proposed federal Clean Power Plan rule has far-reaching implications for the Kansas economy and the bill would provide an opportunity for the Kansas Legislature to have the final say on the Kansas SIP.

Opponents, including representatives of Kansans for Clean Energy, Kansas Interfaith Power & Light, Kansas Electric Power Corporation, Westar Energy, KCP&L, Empire District Electric, Kansas Electric Power Cooperative, Inc., and Kansas Municipal Utilities, provided testimony in opposition to the bill. Representatives from the Kansas City Board of Public Utilities and Sunflower Electric Power Corporation provided written testimony in opposition to the bill. Opponents expressed concern that the bill may prevent the Kansas SIP from being developed within EPA's proposed time line. If Kansas does not submit a SIP, then Kansas could be subject to a federal implementation plan. Opponents stated their businesses and organizations prefer to work with KDHE at the state level than with the EPA at the federal level.

Representatives of the KCC and KDHE provided neutral testimony on the bill, stating the proposed federal Clean Power Plan rule is still a proposed rule and there is concern that the federal rule does not allow enough time for Kansas to develop a SIP. In addition, the neutral conferees expressed

some concern that the bill may place additional barriers to completing a SIP in a timely manner.

The Senate Committee amended the bill to add language that submission of the SIP to the EPA would be dependent upon the final adoption of the federal emission guidelines. The Committee also added language to define “federal emission guidelines.”

The fiscal note prepared by the Division of the Budget on the original bill 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 to conduct reliability and cost analysis studies on the EPA rules, as well as to perform an evaluation of re-dispatch models submitted 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 with existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor’s Budget Report*.