

**SENATE BILL No. 347**

By Committee on Utilities

1-31

1 AN ACT concerning utilities; relating to the state corporation commission;  
2 concerning demand-side programs, cost recovery; amending K.S.A.  
3 2017 Supp. 66-1283 and repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 66-1283 is hereby amended to read as  
7 follows: 66-1283. (a) As used in this section:

8 (1) "Commission" means the state corporation commission;

9 (2) "demand response" means measures that decrease peak demand or  
10 shift demand to off-peak periods of time;

11 (3) "demand-side program" means any program conducted by: (A)  
12 An electric utility to reduce the net consumption of electricity by a retail  
13 electric customer; ~~or~~ (B) a natural gas utility to reduce the net consumption  
14 of natural gas by a retail gas customer:

15 ~~"Demand-side program" may include, but shall not be limited to: (A)~~  
16 ~~Energy efficiency measures, not to include any measures to incite fuel~~  
17 ~~switching for residential heating systems; (B) load management; (C)~~  
18 ~~demand response; and (D) interruptible or curtailable load; or (C) a third~~  
19 ~~party administered program to reduce the net consumption of electricity or~~  
20 ~~natural gas;~~

21 (4) "energy efficiency" means ~~measures that reduce the amount of~~  
22 ~~energy required to achieve a given end use a decrease in retail customer~~  
23 ~~net consumption of electricity or natural gas achieved through measures~~  
24 ~~or programs that target customer behavior, equipment, devices or~~  
25 ~~materials without reducing the quality of energy services; and~~

26 (5) "public utility" means any public electric or gas utility, as defined  
27 in K.S.A. 66-101, and amendments thereto, but does not include a  
28 municipally-owned electric or gas utility or an electric or gas cooperative  
29 that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d,  
30 and amendments thereto.

31 (b) It is the goal of the state to promote the implementation of cost-  
32 effective ~~demand-side programs~~ *energy efficiency* in Kansas. It shall be the  
33 policy of the state to value demand-side program investments equal to  
34 traditional investments in supply and delivery infrastructure as much as is  
35 practicable, ~~but public utilities shall not be required to offer, implement or~~  
36 ~~continue demand-side programs.~~ *Beginning in 2019, the energy efficiency*

1 *savings goals are as follows:*

2 (1) *Electric public utilities shall achieve each year:*

3 (A) *Annual incremental energy efficiency savings from demand-side*  
4 *programs equivalent to at least 1.0% of the prior year's total retail electric*  
5 *sales; and*

6 (B) *incremental peak demand savings from demand-side programs*  
7 *equivalent to at least 30% of the forecasted average annual growth in*  
8 *electric peak demand over the following 10 years; and*

9 (2) *natural gas public utilities shall achieve each year annual*  
10 *incremental energy efficiency savings from demand-side programs*  
11 *equivalent to at least 0.75% of the prior year's total retail natural gas*  
12 *sales.*

13 (c) (1) (A) The commission shall permit public utilities to implement  
14 commission-approved demand-side programs and cost recovery  
15 mechanisms submitted pursuant to this section. The commission shall  
16 issue an order on any demand-side program plan and cost-recovery  
17 mechanisms within 180 days after submission to the commission. The  
18 commission may extend the approval period to 240 days for good cause.  
19 Consistent with K.S.A. 66-117(c), and amendments thereto, if the  
20 commission fails to issue a final order on such program plan and cost-  
21 recovery mechanism within 180 days, or 240 days if the approval period  
22 was extended by the commission for good cause, such program plan and  
23 cost-recovery mechanism shall be deemed approved by the commission  
24 and shall take effect on the proposed effective date contained in such plan.

25 (B) ~~The public utility and the commission shall both have the~~  
26 ~~independent authority to accept or reject any proposed establishment,~~  
27 ~~continuation or modification of a demand-side program, portfolio of~~  
28 ~~programs or associated cost-recovery or incentive mechanisms, but no~~  
29 ~~such establishment, continuation or modification of such programs or~~  
30 ~~mechanisms shall take effect without the approval of both the utility and~~  
31 ~~the commission. If the public utility rejects modifications to a demand-side~~  
32 ~~program or portfolio of programs approved by the commission, including~~  
33 ~~modifications to the cost-recovery mechanism, the public utility shall not~~  
34 ~~be required to implement the program or mechanism.~~

35 (C) Upon final ruling of the commission order, the public utility has  
36 the right to reconsider and may withdraw its plan during the  
37 reconsideration period, which shall not exceed 30 calendar days from the  
38 date the final order was issued. Pursuant to K.S.A. 77-613, and  
39 amendments thereto, the time period for filing a petition for judicial  
40 review shall not begin until the completion of any such reconsideration  
41 period. *The utility shall provide due reasoning for its rejection and an*  
42 *alternative proposal that is projected to save an equivalent amount of*  
43 *energy.*

1       ~~(D)~~ (C) In making its decision whether or not to approve the  
2 proposed program, the commission shall ~~determine the appropriate test~~  
3 *utilize the first edition of the national standard practice manual and the*  
4 *principles outlined therein to determine the appropriate test for evaluating*  
5 *the cost-effectiveness of a demand-side program. This may include the*  
6 *modification of the current testing procedures or the development of a new*  
7 *resource value framework* for evaluating the cost-effectiveness of the  
8 demand-side program. Programs targeted to low-income customers or  
9 general education campaigns ~~do not need to meet a cost-effectiveness test,~~  
10 ~~so long as the commission determines that the program or campaign is in~~  
11 ~~the public interest and is supported by a reasonable budget in the context~~  
12 ~~of the overall budget.~~

13       (2) ~~The commission shall allow recovery of the reasonable and~~  
14 ~~prudent costs associated with delivering commission-approved demand-~~  
15 ~~side programs, so long as the program: (A) Results in energy or demand~~  
16 ~~savings; and (B) is beneficial to customers in the customer class for which~~  
17 ~~the programs were implemented, whether or not the program is utilized by~~  
18 ~~all customers in such class. The fact that a commission-approved program~~  
19 ~~proves not to be cost-effective is not by itself sufficient grounds for~~  
20 ~~disallowing cost recovery. Programs determined to be non-cost-effective,~~  
21 ~~other than programs targeted to low-income customers or general~~  
22 ~~education campaigns, shall be modified to address deficiencies or~~  
23 ~~terminated following such determination shall receive special~~  
24 ~~consideration as a value in the principles of the test.~~

25       (D) *The commission may approve performance incentives for a*  
26 *public utility that exceeds the energy efficiency savings goals outlined in*  
27 *subsection (b).*

28       (2) *The total amount of the financial incentive for an electric public*  
29 *utility that achieves an annual incremental savings of greater than 1.0% of*  
30 *its total annual retail electricity sales in megawatt hours in the preceding*  
31 *year or a natural gas public utility that achieves annual incremental*  
32 *savings of greater than 0.75% of its total annual retail natural gas sales in*  
33 *decatherms in the preceding year shall not exceed the lesser of the*  
34 *following amounts:*

35       (A) *20% of the net present value of life-cycle cost reductions*  
36 *experienced by the public utility's customers as a result of implementation,*  
37 *during the year for which the financial incentive is paid, of the energy*  
38 *waste reduction plan; or*

39       (B) *15% of the public utility's actual energy efficiency program*  
40 *expenditures for the year.*

41       (d) (1) To comply with this section, the commission ~~may~~ shall allow  
42 cost recovery mechanisms that further encourage investments in demand-  
43 side programs. Such cost recovery mechanisms may include, but shall not

1 be limited to: (A) Capitalization of investments in and expenditures for  
2 demand-side programs; (B) recovery of ~~lost revenue associated with~~  
3 ~~demand-side programs~~ *the costs of demand-side programs in rates on an*  
4 *expensing basis*; (C) *symmetrical decoupling mechanisms to adjust for*  
5 *sales above or below forecast*; (D) rate design modifications; (E)  
6 accelerated depreciation on demand-side investments; and (F) allowing the  
7 public utility to retain a portion of the net benefits of a demand-side  
8 program for its shareholders.

9 (2) *The commission shall allow recovery of the reasonable and*  
10 *prudent costs associated with delivering commission-approved demand-*  
11 *side programs if the program results in energy or demand savings and is*  
12 *beneficial to customers in the customer class for which the programs were*  
13 *implemented. The fact that such program proves to not be cost-effective is*  
14 *not, independent of other factors, sufficient grounds for disallowing cost*  
15 *recovery.*

16 (3) In determining rates for electricity as part of a demand-side  
17 program, the commission shall *open a docket to determine how to fairly*  
18 *apportion the costs and benefits of such programs to each customer class*  
19 *and the different costs of energy pursuant to time of use.*

20 (e) ~~To achieve the goals of~~ *In executing this act, the commission*  
21 *shall:*

22 (1) Provide timely cost recovery for electric public utilities;

23 (2) ensure that the financial incentives for an electric public utility are  
24 aligned with helping such utility's customers use energy more efficiently  
25 and in a manner that sustains or enhances such customers' incentives to use  
26 energy more efficiently;

27 (3) provide timely earnings opportunities for public utilities  
28 associated with cost-effective, measurable and verifiable demand-side  
29 program savings;

30 (4) provide oversight and approval for utility-specific settlements and  
31 tariff provisions; and

32 (5) provide independent evaluation of demand-side programs, as  
33 deemed necessary by the commission.

34 (f) On or before May 31 of each year, each public utility shall submit  
35 an annual report to the commission describing the results of such demand-  
36 side programs for the previous calendar year. The report shall include:

37 (1) Program expenditures, including incentive payments;

38 (2) peak demand and energy savings impacts and the techniques used  
39 to estimate such impacts;

40 (3) avoided costs and the techniques used to estimate such costs;

41 (4) the estimated cost-effectiveness of the demand-side programs;

42 (5) the net economic benefits of the demand-side programs; and

43 (6) a comparison of the commission authorized program budget to

1 actual costs.

2 (g) The commission may adopt rules and regulations for the  
3 administration of this act.

4 (h) This section shall be known and may be cited as the Kansas  
5 energy efficiency investment act.

6 Sec. 2. K.S.A. 2017 Supp. 66-1283 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its  
8 publication in the statute book.