

**SENATE BILL No. 492**

By Committee on Ways and Means

3-10

1 AN ACT concerning public utilities; relating to the Kansas energy  
2 efficiency investments act; demand-side programs; amending K.S.A.  
3 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. 66-1283 is hereby amended to read as follows: 66-  
7 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 or portfolio of programs conducted~~  
15 ~~by a public utility to modify the consumption of electricity or natural gas~~  
16 ~~on the customer's side of the utility meter. "Demand-side program" may~~  
17 ~~include includes, but shall not be is not limited to: (A) energy efficiency~~  
18 ~~measures, not to include any measures to incent fuel switching for~~  
19 ~~residential heating systems; (B), programs, load management; (C),~~  
20 ~~demand response; and (D) interruptible or curtailable load rates;~~

21 (4) "energy efficiency program" means ~~measures that a program or~~  
22 ~~portfolio of programs conducted by a public utility to reduce the amount of~~  
23 ~~energy required to achieve a given end use on the customer's side of the~~  
24 ~~utility meter while achieving substantially the same level of end-use~~  
25 ~~service; and~~

26 (5) "fuel switching" means changing an existing particular  
27 residential end use from natural gas to electricity or from electricity to  
28 natural gas;

29 (6) "interruptible or curtailable rate" means a tariffed rate under  
30 which a customer receives a reduced rate in exchange for agreeing to  
31 allow the utility to withdraw the supply of electricity or natural gas under  
32 certain specified conditions;

33 (7) "lost margin revenue" means income from retail sales of  
34 electricity or natural gas that is not collected by a utility as a direct result  
35 of the success of such utility's demand-side program, less any expenses the  
36 utility was not required to pay by forgoing the sale of such electricity or

1 *natural gas;*

2 ~~(5)(8)~~ "public utility" means any public electric or gas utility, as  
3 defined in K.S.A. 66-101, and amendments thereto, but does not include a  
4 municipally-owned electric or gas utility or an electric or gas cooperative  
5 that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d,  
6 and amendments thereto; *and*

7 (9) "*total resource cost test*" means a test that compares the sum of  
8 avoided utility costs to the sum of all incremental costs of end-use  
9 measures that are implemented due to the program, including both utility  
10 and participant contributions, plus utility costs to administer, deliver and  
11 evaluate each demand-side program.

12 (b) It is the goal of the state to promote the implementation of ~~cost-~~  
13 ~~effective~~ *effective* demand-side programs in Kansas *to minimize the long-*  
14 *term cost of utility service.* It shall be the policy of the state to value  
15 demand-side program investments equal to traditional investments in  
16 supply and delivery infrastructure ~~as much as is practicable, but when~~  
17 ~~evaluated over the long-term planning horizon.~~ *Demand-side programs*  
18 *shall not:*

19 (1) ~~Require public utilities shall not be required to offer, implement or~~  
20 ~~continue demand-side programs;~~

21 (2) *result in fuel switching; or*

22 (3) *restrict fuel choice for new construction of residential heating end*  
23 *uses.*

24 (c) (1) (A) *Upon a finding that a submission for any demand-side*  
25 *program was consistent with this section,* the commission shall permit  
26 public utilities to implement ~~commission-approved~~ *such demand-side*  
27 ~~programs~~ *program* and ~~cost-recovery~~ *to recover the associated costs*  
28 *through cost-recovery* mechanisms submitted pursuant to this section. The  
29 commission shall issue an order on any demand-side program plan,  
30 *associated costs* and cost-recovery mechanisms within ~~180~~ *120* days after  
31 submission to the commission. The commission may extend the approval  
32 period to ~~240~~ *180* days for good cause. ~~Consistent with K.S.A. 66-117(e),~~  
33 ~~and amendments thereto,~~ If the commission fails to issue a final order on  
34 such program plan, *associated costs* and cost-recovery mechanism within  
35 ~~180~~ *120* days, or ~~240~~ *180* days if the approval period was extended by the  
36 commission for good cause, such program plan, *associated costs* and cost-  
37 recovery mechanism shall be deemed approved by the commission and  
38 shall take effect on the proposed effective date contained in such plan.

39 (B) *Pursuant to the requirements of this section,* the public utility and  
40 the commission shall both have the independent authority to accept or  
41 reject any proposed establishment, continuation or modification of a  
42 demand-side program, ~~portfolio of programs~~ or associated cost-recovery or  
43 incentive mechanisms, but no such establishment, continuation or

1 modification of such ~~programs~~ *program* or mechanisms shall take effect  
2 without the approval of both the utility and the commission. If the public  
3 utility rejects modifications to a demand-side program ~~or portfolio of~~  
4 ~~programs~~ approved by the commission, including modifications to the  
5 cost-recovery mechanism, the public utility shall not be required to  
6 implement the program or mechanism.

7 ~~(C) Upon final ruling of the commission order,~~ The public utility ~~has~~  
8 ~~shall have~~ the right to reconsider and may ~~withdraw its plan during the~~  
9 ~~reconsideration period, which elect not to implement the program and~~  
10 ~~cost-recovery mechanisms approved by the commission order. The~~  
11 ~~reconsideration period~~ shall not exceed 30 calendar days from the date the  
12 final order was issued. Pursuant to K.S.A. 77-613, and amendments  
13 thereto, the time period for filing a petition for judicial review shall not  
14 begin until the completion of any such reconsideration period.

15 ~~(D) (1) In making its decision~~ *When deciding* whether ~~or not to~~  
16 ~~approve the a proposed program, the commission shall determine the~~  
17 ~~appropriate test for evaluating the cost-effectiveness of the demand-side~~  
18 ~~program, the commission shall:~~

19 *(A) Consider the entire portfolio of programs and may consider*  
20 *multiple cost-effectiveness tests in evaluating the cost-effectiveness of such*  
21 *demand-side program;*

22 *(B) give primary consideration to the total resource cost test, but*  
23 *shall not reject a demand-side program based solely on the results of a*  
24 *single total resource cost test. If a demand-side program passes the total*  
25 *resource cost test with a benefit-to-cost ratio greater than or equal to a*  
26 *one-to-one ratio, such program shall be found to be just and reasonable*  
27 *and shall be approved; and*

28 *(C) evaluate future investments in demand-side programs without*  
29 *using previous public utility sunk costs.*

30 *(2) Programs targeted to low-income customers or general education*  
31 *campaigns do not need to meet a any cost-effectiveness test, so long as the*  
32 *commission determines that the program or campaign is in the public*  
33 *interest and is supported by a reasonable budget in the context of the*  
34 *overall budget.*

35 ~~(2)(3)~~ *The commission shall allow recovery of the reasonable and*  
36 *prudent costs associated with delivering ~~commission-approved any~~*  
37 *demand-side ~~programs~~ *program implemented pursuant to this section, so*  
38 *long as the program:**

39 *(A) (i) ~~Results in~~ Reduces retail energy consumption; ~~or~~ (ii) reduces*  
40 *the peak demand savings; ~~and (B) is;~~ or (iii) shifts demand to off-peak*  
41 *periods;*

42 *(B) does not result in fuel switching; and*

43 *(C) is beneficial to ~~eustomers~~ in the customer class for which the*

1 programs were implemented, whether or not the program is utilized by all  
2 customers in such class.

3 (4) The fact that a ~~commission-approved~~ program *implemented*  
4 *pursuant to this section* proves not to be cost-effective is not by itself  
5 sufficient grounds for disallowing cost recovery. Programs determined  
6 *during subsequent review to not be non-cost-effective cost-effective*, other  
7 than programs targeted to low-income customers or general education  
8 campaigns, shall be modified to address deficiencies or terminated  
9 following such determination.

10 (d) (1) ~~To comply with this section, The commission may allow cost~~  
11 ~~recovery shall approve implementation of cost-recovery mechanisms that~~  
12 ~~by public utilities upon a finding that such mechanisms further encourage~~  
13 ~~investments in demand-side programs. Such cost-recovery cost-recovery~~  
14 ~~mechanisms may include, but shall not be limited to: (A) Capitalization of~~  
15 ~~investments in and expenditures for demand-side programs; (B) recovery~~  
16 ~~of lost revenue associated with demand-side programs; (C) decoupling;~~  
17 ~~(D) rate design modifications; (E) accelerated depreciation on demand-~~  
18 ~~side investments; and (F) allowing the public utility to retain a portion of~~  
19 ~~the net benefits of a demand-side program for its shareholders shall:~~

20 (A) *Provide timely cost recovery of investments and expenditures for*  
21 *demand-side programs that may include: (i) Direct contemporaneous*  
22 *recovery as costs are incurred; (ii) mechanisms that project such costs*  
23 *with a later true-up to actual costs; or (iii) capitalization of investment*  
24 *and expenditures for demand-side programs recovered by the utility*  
25 *through amortization of such expenses;*

26 (B) *ensure the recovery of the lost margin revenue, unless the utility's*  
27 *prior general rate case proceeding provided for lost margin revenue*  
28 *recovery of demand-side programs through: (i) Comprehensive utility*  
29 *decoupling mechanisms consistent with best utility practices; or (ii) rate-*  
30 *design modifications; or*

31 (C) *provide timely earnings opportunities for public utilities*  
32 *associated with cost-effective, measurable and verifiable demand-side*  
33 *program savings that: (i) Allow the public utility to retain a portion of the*  
34 *net benefits of such demand-side programs; (ii) achieve targets through*  
35 *energy savings-based or demand-side program savings-based incentives;*  
36 *and (iii) provide rate-of-return incentives on investments and expenditures*  
37 *for such programs.*

38 (2) In determining rates for electricity as part of a demand-side  
39 program, the commission shall fairly apportion the costs and benefits of  
40 such programs to each customer class.

41 ~~(e) To achieve the goals of this act, (3) (A) The commission shall:~~  
42 ~~(1) Provide timely cost recovery for electric public utilities;~~

43 ~~(2) ensure that the financial incentives for an electric public utility are~~

1 aligned with helping such utility's customers use energy more efficiently  
 2 and in a manner that sustains or enhances such customers' incentives to use  
 3 energy more efficiently;

4 ~~(3) provide timely earnings opportunities for public utilities~~  
 5 ~~associated with cost-effective, measurable and verifiable demand-side~~  
 6 ~~program savings;~~

7 ~~(4) provide oversight and approval for utility-specific settlements and~~  
 8 ~~tariff provisions; and~~

9 ~~(5) provide ensure independent evaluation evaluations of demand-~~  
 10 ~~side programs, as deemed necessary by the commission are conducted.~~

11 *(B) Such evaluations shall be conducted by a third-party vendor*  
 12 *selected by the public utility and approved by the commission. Such*  
 13 *evaluations shall include: (i) Peak demand and energy savings and the*  
 14 *techniques used to estimate such savings; (ii) the estimated cost-*  
 15 *effectiveness of the demand-side programs; (iii) any adjustment to the*  
 16 *presumed net-to-gross ratio of 1.0 that reflects any savings that are*  
 17 *attributable to the demand-side programs; and (iv) the net benefits of the*  
 18 *demand-side programs.*

19 ~~(f) On or before May 31 of each year, Each public utility shall submit~~  
 20 ~~an annual report to the commission describing the results of such demand-~~  
 21 ~~side programs for the previous calendar year program year within five~~  
 22 ~~months of the program year's end. The report shall include:~~

23 (1) Program expenditures, including incentive payments;

24 (2) *estimated* peak demand and energy savings impacts and the  
 25 techniques used to estimate such impacts;

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

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

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

29 ~~(6)(3) a comparison of the commission authorized program budget to~~  
 30 ~~actual costs.~~

31 (g) The commission may adopt rules and regulations for the  
 32 administration of this ~~act~~ section.

33 (h) *This section shall govern demand-side programs for public*  
 34 *utilities and shall control to the extent it conflicts with any other provision*  
 35 *of law or rule or regulation.*

36 (i) This section shall be known and may be cited as the Kansas  
 37 energy efficiency investment act.

38 Sec. 2. K.S.A. 66-1283 is hereby repealed.

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