

SESSION OF 2009

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2014**

As Recommended by House Committee on
Energy and Utilities

Brief*

Sub. for HB 2014 would:

- Enact new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amend existing law regarding entities that store hydrocarbons underground;
- Enact the Compressed Air Energy Storage Act;
- Enact a new law establishing a timeframe for the Kansas Corporation Commission's action on certificates of public convenience;
- Amend the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;
- Amend existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Enact the Renewable Energy Standards Act;
- Enact the Net Metering and Easy Connection Act;
- Amend the Kansas Air Quality Act in regard to its relationship to federal law and in regard to appeals from

*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>

decisions of and emergency powers of the Secretary of Health and Environment;

- Enact new law creating access by municipal and cooperative electric utilities to new baseload electric generation capacity; and
- Enact new law creating the Kansas Energy Resources Commission.

The Act would become effective upon publication in the *Kansas Register*.

Elements of the bill are described below.

Fuel Economy and Energy Efficiency

The bill would require the Secretary of Administration to adopt rules and regulations:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008;
- Establishing energy efficiency guidelines for state agencies for the purchase of products and equipment such as appliances, lighting fixtures and bulbs and computers, that would be at least as energy efficient as similar products that qualify for the Energy Star[®] program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Requiring state agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary would be required to submit an annual

report to the Legislature identifying state-owned property where an excessive amount of energy is being used;

- Establishing energy efficiency performance standards for leased space and improvements. The Secretary would be prohibited from approving, renewing or extending building leases unless the lessor has submitted an energy audit for the building. Lessors would be required to address the performance standards based on the energy audit; and
- Prescribing energy efficiency performance standards for state buildings. All new and, to the extent possible, renovated, state-owned buildings would have to be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE) or the International Energy Conservation Code (IECC).

The Energy Office of the Kansas Corporation Commission (KCC) would be required to develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP) to the extent that funds are appropriated for that purpose. The Commission also would be required to strongly encourage state agencies that operate and maintain buildings and that do not participate in the FCIP to do so by December 1, 2011.

Underground Hydrocarbon Storage Wells

The bill would amend current law regarding underground hydrocarbon storage wells by adding a definition for “company or operator.” The term would be defined as any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

Compressed Air Energy Storage Act (CAES)

The bill would enact the Compressed Air Energy Storage Act, which would establish a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air.

The KCC would be required to adopt rules and regulations addressing issues such as site selection, design and operation criteria, and requirements for monitoring, safety and closure. The Commission would be authorized to establish rules and regulations establishing fees for permitting, monitoring and inspecting operators; moneys received would be deposited in the Compressed Air Energy Storage Fund, which would be created by the Act, and used to pay the costs of regulation.

The Department of Health and Environment (KDHE) would be required to adopt rules and regulations related to air emissions from compressed air energy storage wells and storage facilities to ensure compliance with the Kansas Air Quality Act. The KCC and KDHE would be authorized to enter into a memorandum of understanding concerning implementation of the Act.

The Act would create financial penalties for violations of the Act.

Certificates of Public Convenience

The bill would establish a timeframe for the KCC to grant, deny or amend certificates of public convenience. The Commission would have to issue a decision within 180 days from receipt of the application, unless the applicant extends the time in writing. This requirement would not apply to decisions to grant or deny a certificate in cases involving acquisitions and mergers of utilities.

Kansas Electric Transmission Authority

The bill would amend existing law to allow the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs or other charges for use of facilities owned, financed or administered by KETA and for services rendered by KETA, provided such costs were not recoverable through tariffs of the Southwest Power Pool.

The bill also would clarify that KETA's statutory rights and powers extend to electric transmission lines that have been deemed compatible with plans adopted by the Southwest Power Pool, as well as to transmission lines with an operating voltage of 60 kilovolts or more which have been approved by the Southwest Power Pool.

Deregulation of Large Electric Cooperatives

The bill would amend existing law to allow large electric cooperatives to remove themselves from the regulatory jurisdiction of the KCC regarding rates. Under the bill, the option to deregulate would be expanded to cover the following entities:

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and
- Any member-owned corporation formed prior to 2004.

The bill would amend existing law to require that, in the case of a generation and transmission cooperative that elected to be deregulated, a petition signed by at least 20 percent of that cooperative's members or by five percent of the aggregate retail customers of such members would trigger a KCC review

of a rate change. In addition, the bill would require cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill would add clarifying language regarding the portion of members of a retail distribution cooperative who must sign a rate review petition, but that portion of members would remain as in current law.

Renewable Energy Standards Act

The bill would enact the Renewable Energy Standards Act. The Act would require electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources, or purchase renewable energy credits.

The amount of electricity from renewable resources would be established by rules and regulations adopted by the Kansas Corporation Commission (KCC) as specified in the Act. Any Commission regulations under the Act would have to be established within 240 days of the effective date of the Act. The renewable energy requirement would apply to all power sold in the State to retail customers regardless of whether the power is generated in Kansas or purchased from an out-of-state source. For purposes of the Act, renewable energy could be generated by wind, solar, photovoltaic, biomass, hydropower, geothermal, waste incineration and landfill gas resources or technologies; and municipal or other solid waste and animal waste. The Commission would be required to establish a certification process for other renewable energy resources to meet the requirements of the Act.

The renewable energy requirement (net renewable generation capacity) would be for a portion of the affected utility's peak demand (defined as the one-hour maximum annual demand created by the utility's retail load in Kansas) that is at least:

- 10 percent of the peak demand for calendar years 2010 through 2015, based on the average demand during the three years prior of each of those years;
- 15 percent of the peak demand for 2016 through 2019, based on the average demand during the three years prior of each of those years; and
- 20 percent of the peak demand for each year beginning in 2020, based on the average demand during the three years prior of each of those years.

“Net renewable generation capacity” would be defined as the gross hourly maximum output capability of a renewable energy resource when not limited by ambient conditions, equipment, operating or regulatory restrictions, less power required to operate the resource. The phrase refers to resources located in Kansas or those serving ratepayers in the State, regardless of how those resources are treated for ratemaking purposes.

Each megawatt of eligible capacity in Kansas would count as 1.25 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any net metering systems interconnected with the affected utilities under the Net Metering and Easy Connection Act for Renewable Generation, which is also part of the substitute bill, would count toward compliance with the renewable energy requirement. In addition, affected utilities would be able to count savings from energy efficiency programs toward up to 25 percent of the renewable energy requirement. Savings from energy efficiency programs would be determined in accordance with rules and regulations adopted by the KCC. Those savings would have to include both savings at customer facilities and savings by the utility in generation and distribution as compared to the level of usage expected without energy efficiency programs.

The KCC would be required to allow affected utilities to recover costs incurred to meet the renewable energy requirement. As determined by the Commission, a utility would be able to delay compliance with the renewable energy requirement if transmission capacity is not available for the renewable energy, if the utility's customers would realize substantial benefit by delaying compliance until transmission capacity is available, or if the utility can demonstrate that the cost of compliance would adversely impact its credit rating or its liquidity.

The Commission would have broad authority under the Act to establish rules and regulations for administration of the Act, including enforcement mechanisms necessary to ensure compliance with the Act. The Act would authorize imposition of administrative penalties for non-compliance and would give the Commission some discretion in imposition of penalties. Costs of administrative penalties could not be recovered from retail customers.

Net Metering and Easy Connection Act

The bill would create the Net Metering and Easy Connection Act for Renewable Generation and would amend the parallel generation statute. The Act would require any municipal electric utility, electric cooperative, or electric public utility to make net metering available to customer-generators under certain circumstances. "Net metering" would be defined to mean use of metering equipment to measure the difference between the electricity supplied to a customer-generator by a retail electric supplier and the electricity supplied by the customer-generator to the supplier during a billing period.

Renewable energy resources that could be used to generate electricity under the Act include wind, solar, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas resources or technologies; and municipal or other solid waste and animal waste.

The KCC would be required to adopt rules and regulations within nine months of the effective date of the Act for administration of Act in regard to regulated utilities. Governing bodies of non-regulated utilities would be required to adopt policies required by the Act. Customer-generators would be able to utilize either the parallel generation statute or the Net Metering Act. Net generation capacity could be counted toward any renewable energy requirement that a supplier would have. Suppliers would be authorized to recover costs incurred under the Act in the supplier's rate structure.

The Act would provide that retail electric suppliers would measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter, multiple meters, or alternative technology. If the supplier provides the customer-generator with more power during a billing period than the customer generates, the customer would be billed for the net amount provided by the supplier. If the amount of electricity generated by the customer during a billing period exceeds the amount provided by the supplier, the customer would be billed for applicable customer or demand charges, or both. Excess electricity generated by the customer during a billing period would be retained by the supplier as a contribution to the fixed costs associated with owning and maintaining the facilities required to provide electric service to the customer.

The maximum capacity of generating equipment allowed for use by customer-generators under the Act would be 100 kilowatts. Generating equipment would have to meet other specifications established by the Act including being appropriately sized to the customer-generator's electrical load and meeting specified safety, performance, interconnection and reliability standards. Customer-generators would be required to purchase and maintain in force general liability insurance that does not exclude liability for the net metering interconnection. The amount of insurance would have to be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment and the interconnection. Generation systems of 10 kilowatts or less

capacity would only have to meet the statutory standards. Larger systems could be required to meet additional standards established by the KCC or the supplier's governing body. The Act would provide that for any cause of action relating to damages to property or persons caused by the generation unit of a customer-generator or its interconnection, the supplier would not be liable in the absence of clear and convincing evidence of fault on the part of the supplier.

The Act would establish a maximum amount of net generation capacity that a supplier must accept on its system during a calendar year at one percent of the supplier's single-hour peak load during the prior year. Over all, a supplier would not have to make net metering available to additional customers once the total net metering capacity on the supplier's system reaches five percent of the supplier's single-hour peak load during the prior year. "Peak load" would be defined to mean the supplier's one-hour maximum annual demand imposed by its retail load in Kansas.

Suppliers would be able to recover in their rate structures those costs associated with implementation of the Act.

The bill also would amend the parallel generation statute to add a definition of "avoided energy cost." That phrase would be defined to mean the current average cost of fuel and purchased energy for the preceding month for a utility or for a non-generating utility's wholesale power supplier. That defined term would replace the phrase "monthly system average cost of energy per kilowatt hour" in the statute as the basis for compensation for excess energy provided to utilities by parallel generators. The statute also would be amended to authorize customer-generators, as defined in the Net Metering Act, to choose to either utilize that Act or the parallel generation statute. Once the choice is filed with the utility, the customer would not be able to change the method chosen.

The KCC would be authorized in the parallel generation statute to approve net metering tariffs requested by electric utilities for other methods of renewable generation not

described in the Net Metering Act. Finally, the statute would be amended to delete a reference to the Governor's goals for production of energy from wind and to include in its place a reference to a renewable portfolio target or mandate.

Kansas Air Quality Act Amendments

The bill would amend the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act. The restriction in the bill would not apply to a plan for a non-attainment area under the federal Clean Air Act. The bill also would prohibit rules and regulations under the State Act from being enforced in any area of the State prior to the time required under the federal Act. Counties would be prohibited from utilizing home rule authority to create exemptions from or change the application of the Kansas Air Quality Act.

The Secretary would be prohibited from denying or delaying issuance of a permit required under the State Act if the requirements of that Act have been met by the applicant.

If requested by the applicant, the Secretary would be required to reconsider an action on a permit, filed after January 1, 2006 and prior to the effective date of the Act, that remains pending in any administrative or judicial review proceeding. The application for reconsideration would have to be filed with the Secretary within 60 days of the effective date of the Act, and the Secretary would have 15 days during which to act on the request. The Secretary's reconsideration and determination would be governed by the Act as amended by the bill. If the Secretary fails to act within the 15 day period, the party who requested review would be entitled to seek a writ of mandamus from the Court of Appeals.

An applicant aggrieved by the Secretary's action after the reconsideration would be able to file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's

determination. The Court's review would be conducted in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions but without any requirement to exhaust other administrative remedies.

KSA 65-3012 would be amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The procedure also would be applicable to an imminent or actual violation of the Kansas Air Quality Act. The new provision would authorize the Secretary of Health and Environment to issue a temporary order directing the owner or operation or the pollution source to take steps necessary to prevent the offending act or to eliminate the offending practice. The order could not exceed 72 hours in duration.

When the temporary order is issued, the Secretary would be authorized to file an action in district court to enjoin the offending activity. Alternatively, the Secretary could request the Attorney General or the appropriate county or district attorney to file for the injunction. The court could issue a temporary or permanent injunction if the Secretary shows that the offending condition or situation exists. Persons aggrieved by an order of the Secretary issued under the new procedure would be entitled to review of the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party would not be required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision would have precedence over other cases in regard to order of trial.

Access to New Baseload Generation Capacity

The bill would require any public utility that builds a new fossil fuel or nuclear baseload electric generating facility in Kansas to provide to any municipal or cooperative electric utility an option to own a portion of the facility or enter into an agreement to purchase a portion of the power generated, or both. The portion available to municipal or cooperative utilities

would be a maximum of 15 percent of the rated capacity of the facility or 200 megawatts of power, whichever is less, that is not dedicated to Kansas consumers. The aggregate amount of purchased power by all municipal utilities and cooperatives could not exceed 200 megawatts.

If the facility developer proceeds with construction of the new generating facility, any municipal or cooperative electric utility in the State would have six months from the date of issuance of the construction permit under the Kansas Air Quality Act for the facility, or nine months from the effective date of this Act, whichever occurs first, to exercise the option to purchase an ownership interest in or to enter into an agreement to purchase power from the new facility. The terms and conditions of the sale or the power purchase agreement would have to be the same as those for other participants in the facility, other than the developer.

The bill would provide that if more than one municipal or cooperative electric utility exercises the option described in the bill, in the absence of a mutual agreement otherwise, the amount of power available would be allocated equally among those utilities, but an option could not be exercised for less than 25 megawatts.

Kansas Energy Resources Commission

The bill would create the Kansas Energy Resources Commission, a seven-member body that would make annual recommendations to the Governor and the Legislature. The charge to the Commission would be as follows:

- Develop strategies to maximize productive use of the existing energy resources in Kansas;
- Identify means of sustaining and, if possible, increasing production and use of identified energy resources;

- Identify emerging technologies and opportunities relevant to Kansas energy resources and recommend state investment in specific research projects;
- Investigate scientific literature on the public health impacts of emissions of greenhouse gases and particulate matter, as well as technologies to capture and reduce such emissions, and recommend emission limits for man-made emissions by type of emitting source;
- Recommend reallocation of existing state budget resources;
- Recommend permanent funding sources for energy and sustainability research; and
- Pursue other issues Commission members deem necessary.

Six members of the Commission would be appointed by legislative leadership, and one member would be appointed by the Governor. Members would be required to be residents of Kansas; recognized for their breadth of knowledge on energy issues and initiatives, with expertise in the matters assigned for commission review; and to possess either terminal professional degrees or a minimum of five years experience in their field. Initial appointments would be for staggered terms of office; thereafter members would have four-year terms. Members would receive reimbursement for certain expenses, but would not receive compensation.

The Commission would meet at least quarterly and would submit a preliminary report by September 1, 2010. Legislative branch agencies would be required to provide assistance as requested by the Commission and authorized by the Legislative Coordinating Council. The KCC also would be required to provide any assistance requested by the Council.

Background

The substitute bill includes provisions and subject matter originally introduced as 2009 HB 2013, HB 2014, HB 2015, HB 2017, HB 2035, HB 2043, HB 2051, HB 2127, HB 2182, HB 2224, HB 2225, HB 2271, and 2008 HB 2639. All of the 2009 bills were heard by the House Committee on Energy and Utilities and additionally considered by subcommittees of that Committee prior to inclusion of the subject in the substitute bill. In most instances, provisions of the substitute bill are not identical to the introduced bills.

A fiscal note for the substitute bill was not available at the time the House Committee acted on the bill. Information provided by the Division of the Budget about the possible fiscal impact of various provisions of the bill, as introduced separately, is discussed below.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2015, regarding energy efficiency of state owned and leased buildings and state-owned vehicles, described a potential fiscal impact of \$152,000 for two employees and operating expenditures. The estimate includes \$86,000 for the salary of an engineer to review the new construction project plans to ensure that they meet the energy requirements, and \$50,000 for the salary of an administrator who would be responsible for data collection, analysis and reporting of the energy audits.

The fiscal note prepared by the Division of the Budget for the introduced version of HB 2271 regarding hydrocarbon storage wells indicates that there would be no fiscal effect on the Department of Health and Environment.

No fiscal note on the introduced version of HB 2224, that would enact the Compressed Air Energy Storage Act, was available at the time the House Committee took action on the substitute bill.

The fiscal note prepared by the Division of the Budget for the introduced version of HB 2017, that would establish a deadline for KCC action on certificates of public convenience, stated that the Kansas Corporation Commission indicates that most applications could be processed within the time limitation that would be imposed by the bill. As described in the fiscal note, some complex cases, such as mergers of utility companies, involve significant changes in how the serving company operates, its cost structure, and financial picture. The fiscal note states that the Commission may not be able to adequately review the effects of a few applications within the time that would be allowed in the introduced version of the bill (240 days), and estimate that they may need to hire consultants to meet the deadline. Consulting fees of between \$25,000 and \$100,000 per application may be required, and would be financed by the Public Service Regulation Fund. Any increase in expenditures resulting from enactment of these provisions would be in addition to amounts recommended in *The FY 2010 Governor's Budget Report*. The substitute bill imposes a 180 day requirement on certificate actions and exempts those actions involving mergers and acquisitions of utilities.

The Division of the Budget's fiscal note on the introduced version of HB 2014 states that the KCC estimates that enactment of the bill, that would amend the Kansas Electric Transmission Authority Act, would have no fiscal effect on agency operations.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2035, regarding procedures for deregulation of large electric cooperatives, indicates that the fiscal effect of the bill on the KCC would be negligible.

The Division of the Budget's fiscal note on the introduced version of HB 2127, that would create a renewable energy requirement and enact a net metering procedure, estimates that enactment of those provisions would create a fiscal impact on the KCC of between \$80,000 and \$150,000 for professional services to assist with preparation of rules and regulations in subject areas in which the KCC does not currently have

expertise. Those expenses would be paid from the Public Service Regulation Fund. The fiscal note states that any increase in expenditures because of the passage of HB 2127 would be in addition to amounts recommended in the *FY 2010 Governor's Budget Report*.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2013, that would establish renewable portfolio standards, states that the KCC could develop rules and regulations within existing resources. As a result, the fiscal effect of the bill would be negligible.

The fiscal notes prepared by the Division of the Budget for the introduced versions of HB 2043 and HB 2051, regarding net metering, states that the KCC would be required to contract with consultants familiar with interconnection standards at an estimated cost of \$40,000 to \$75,000 from the Public Service Regulation Fund. The fiscal notes state that any increase in expenditures because of the passage of those bills would be in addition to amounts recommended in the *FY 2010 Governor's Budget Report*.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2182, that would amend the Kansas Air Quality Act, states that KDHE estimates that enactment of the bill may necessitate reconsideration of the construction permit application for Sunflower Electric Corporation's proposed Holcomb expansion. The fiscal note also says that any analysis done for the reconsideration could require considerable staff time within a longer than expected time-frame. The fiscal note states that KDHE could complete the required analysis within existing staff resources.

No fiscal note was available for HB 2225, regarding access of municipal and cooperative utilities to new baseload generation capacity, at the time the Committee took action on the substitute bill.

The fiscal note prepared by the Division of the Budget on the introduced version of 2008 HB 2639 regarding creation of the Kansas Energy Resources Commission, stated that Legislative Administrative Services estimated that enactment would have resulted in additional State General fund expenditures of \$35,768 for eight two-day meetings in FY 2009. The substitute bill would authorize appropriations for the Commission from the Public Service Regulation Fund, and would not authorize payment of compensation to Commission members. The original fiscal note may not be relevant to the provisions included in the substitute bill.