

Senator Steineger moved to amend S Sub for HB 2066, on page 19, after line 28, by inserting the following:

“New Sec. 24. (a) Sections 24 through 26, and amendments thereto, shall be known and may be cited as the carbon dioxide emissions offset act and shall not be construed to be part of the Kansas air quality act.

(b) As used in the carbon dioxide emissions offset act:

(1) “Affected facility” means a fossil-fuel-fired steam electricity generating unit of more than 250 million British thermal units per hour heat input other than:

(A) A facility owned or operated by the federal government;

(B) a facility located on tribal lands; or

(C) any other facility exempt under section 111 of the federal clean air act.

(2) “Community wind resources” means any new wind energy project that:

(A) Has an ownership structure as follows:

(i) For a project that consists of one or two turbines, is owned by one or more qualified owners with at least 33% of the power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) for a project that consists of more than two turbines, is owned by qualified owners with no single qualified owner owning more than 15% of a project and with at least 33% of the power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) has a resolution of support adopted:

(i) By the county board of each county in which the project is to be located; or

(ii) by the tribal council for the project located within the boundaries of an Indian reservation.

(3) “Construct” or “construction” means physical on-site construction of an affected facility.

(4) “Owner or operator” means any person who owns, leases, operates, controls or supervises an affected facility subject to any standard or requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., and amendments thereto, or any rules and regulations promulgated thereunder.

(5) “Potential-to-emit” means the maximum capacity of an affected facility to emit carbon dioxide under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit carbon dioxide, including any reduction equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design.

(6) “Qualified owner or owners” means:

(A) An individual who is a Kansas resident;

(B) any of the following entities, all members of which are individuals who was Kansas residents: A limited liability company which is organized under the Kansas revised limited liability company act (K.S.A. 17-7662 et seq., and amendments thereto), a corporation organized not-for-profit under the laws of this state or a cooperative organized under the cooperative marketing act (K.S.A. 17-1601 et seq., and amendments thereto), the electric cooperative act (K.S.A. 17-4601 et seq., and amendments thereto) or the renewable energy electric generation cooperative act (K.S.A. 17-4651 et seq., and amendments thereto);

(C) a Kansas political subdivision or local government including, but not limited to, a municipal electric utility, or a municipal power agency on behalf of and at the request of a

member distribution utility, a county, a city, a school district, a public or private higher education institution or any other local or regional governmental organization such as a board, commission or association; or

(D) a tribal council.

(7) “Reconstruct” or “reconstruction” means any rebuilding of an emission source within an existing affected facility which generates electricity from fossil fuel that would result in an increase in carbon dioxide emissions from such facility.

(8) “Supercritical pulverized coal technology” means a steam generating facility operating at or above 3,600 pounds per square inch and less than 1,200 degrees Fahrenheit.

(9) “Ultra-supercritical pulverized coal technology” means a steam generating facility operating at or above 4,500 pounds per square inch and at or above 1,200 degrees Fahrenheit.

New Sec. 25. (a) Any affected facility to be constructed or reconstructed on or after January 1, 2008, shall comply with the emission limitations provided for herein if the potential-to-emit from the proposed affected facility equals or exceeds 250,000 tons per year of carbon dioxide.

(b) Except as otherwise provided herein:

(1) On and after the date on which the initial performance test of an affected facility is completed or required to be completed, whichever occurs first, neither the owner nor the operator of such affected facility shall on an annual basis cause to be discharged into the atmosphere from such affected facility any gases containing carbon dioxide in excess of the following emission limits:

(A) For an affected facility using solid fuel, carbon dioxide in excess of 1,520 pounds per net megawatt hour;

(B) for an affected facility using liquid fuel, carbon dioxide in excess of 1,080 pounds per net megawatt hour; and

(C) for an affected facility using gaseous fuel, carbon dioxide in excess of 810 pounds per net megawatt hour; and

(2) ten years after the initial performance test of an affected facility using solid fuel is completed or required to be completed, whichever occurs first, neither the owner nor the operator of such affected facility shall cause to be discharged into the atmosphere any gases containing carbon dioxide in excess of 1,330 pounds per net megawatt hour.

New Sec. 26. (a) For affected facilities not meeting the carbon dioxide emission limitations set forth in section 24, and amendments thereto, the owner or operator shall be deemed to be in compliance if the emissions in excess of such limitations are mitigated or offset by any of the following means or methods in the amount of the credit as provided below:

(1) For wind-powered electricity generating facilities constructed after January 1, 2000, excluding community wind resources, an offset credit equal to one and one-half times an amount computed as follows, if the affected facility is located in Kansas, and one times such amount if located outside of Kansas: The affected facility’s expected carbon dioxide emission rate expressed in pounds per megawatt, multiplied by the name plate rating of the wind-powered electricity generating facility expressed in megawatt hours, multiplied by the expected average capacity factor of the wind-powered electricity generating facility at the proposed site or sites, multiplied by 8,760 hours per year. The owner or operator of the affected facility shall be entitled to the offset credit whether it owns or leases the wind-powered electricity generating facility, or purchases power from such wind-powered

electricity generating facility;

(2) for development of carbon reduction, storage or utilization projects, an offset credit shall be received for the reduced, avoided, displaced, captured, stored or sequestered carbon dioxide as follows:

(A) For capture of carbon dioxide emitted from an affected facility using chilled ammonia, amine capture and coal gasification, an offset credit equal to two times the actual carbon dioxide tonnage captured; or

(B) for storage of carbon dioxide emitted from an affected facility using deep aquifer injection, depleted oil or natural gas field injection, enhanced oil or gas recovery, carbon capture sequestration or pipeline projects for the transportation of carbon dioxide to be used for enhanced oil or gas recovery or carbon storage, an offset credit equal to three times the actual carbon dioxide tonnage sequestered, stored or displaced; or

(C) for development of carbon utilization technology that displaces or offsets the release of carbon dioxide using algae to produce bio-diesel or starch substitutes for grain based ethanol, an offset credit equal to three times the actual carbon dioxide tonnage displaced or offset in Kansas;

(3) for any nuclear or hydro-power electricity generating facility constructed after January 1, 2008, any large-scale energy storage project, any central station solar energy project or any efficiency project of an existing fossil-fueled electricity generating facility, an offset credit equal to three times the actual carbon dioxide tonnage avoided if the facility or project is located in Kansas. If the facility or project is located outside of Kansas, the offset credit shall be equal to the actual carbon dioxide tonnage avoided;

(4) for energy efficiency and renewable distributed generation sources located in Kansas, using demand-side peak-shaving or photo-voltaic, bio-mass or community wind resources, excluding wind-powered electricity generating facilities described in subsection (a)(1), and for electricity purchased from a customer-generator pursuant to the net metering and easy connection act, an offset credit equal to three times the actual carbon dioxide tonnage avoided;

(5) for ultra-supercritical pulverized coal technology projects, an offset credit equal to three times the actual carbon dioxide tonnage avoided in comparison to the carbon dioxide emissions per megawatt hour from a supercritical pulverized coal technology project;

(6) for non-release agricultural related projects, using minimum till or no-till practices, conversion of cultivated land to pasture, forest sequestration projects, and erosion, windbreaks or community beautification projects, an offset credit equal to three times the actual carbon dioxide tonnage sequestered as a result of such projects in Kansas, and two times the actual carbon dioxide tonnage sequestered as a result of such projects within the service territory of the owner or operator.

(b) For transmission system improvements located inside or outside Kansas, including direct-current converters or ties, which enable or enhance the development in whole or in part of renewable resources electricity generating facilities located in Kansas, an offset credit shall be allowed as follows:

(1) The carbon dioxide offset credit from any project shall be based on the incremental available transfer capacity, expressed in mega-volt-amperes, which may be available for renewable energy transfers as a result of such project. Such determination of available transfer capacity must be demonstrated by an engineering study performed by, or in accordance with procedures developed by, the southwest power pool or other reliability,

planning or regional transmission organization, if any, in the affected transmission grid or grids.

(2) Such carbon dioxide offset shall be determined by taking the additional transmission capacity, expressed in mega-volt-amperes, multiplied by a 0.9 power factor, multiplied by the rate of the affected facility's expected carbon dioxide release rate expressed in pounds per megawatt hour, multiplied by a 40% capacity factor, multiplied by 8,760 hours per year, to be recalculated on an annual basis. The owner or operator of the affected facility shall be entitled to an offset credit whether it owns or leases the transmission facility.

(c) For research and development projects to develop new technology to capture, displace or sequester carbon, which were incurred in good faith but did not result in the development of successful technology to capture, displace or sequester carbon, an offset credit equal to one ton of carbon dioxide reduction for each dollar expended shall be allowed for 10 years.

(d) For expenditures by any Kansas electric public utility for energy efficiency programs whose purpose is to educate the public on energy conservation, or expected to lead to the reduction of energy use by the public, an offset credit equal to one-half of a ton of carbon dioxide for each dollar expended shall be allowed.

(e) An owner or operator of an affected facility shall receive an offset credit for the retirement of other electricity generating units located in Kansas which are permanently removed from service on or after July 1, 2008, and which combusted the same fuel as the affected facility. The owner or operator shall state, in a written format prescribed by the permitting authority, those units that have been permanently retired on a specific date and the fossil-fuel capability of such unit. Such offset credit is only applicable if fuel utilized by the affected facility is the same fuel as that utilized by the retired electricity generating unit.

(f) If an owner or operator is rendered unable, wholly or in part, by force majeure, to carry out its obligations under this act, the owner's or operator's performance herein, to the extent affected by such force majeure, shall be suspended during the continuance of any inability, provided the owner or operator is in good faith attempting with reasonable dispatch to remedy the cause. As used in this subsection, "force majeure" means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockages, insurrections, riots, epidemics, natural disasters, civil disturbances, failure of or accidents to machinery or lines or any other cause, whether similar or dissimilar to the foregoing, that is beyond the owner's or operator's reasonable control.

(g) Any person that can substantiate the reduction of the emission of carbon dioxide through a carbon mitigation project located in Kansas, shall be entitled to an offset credit in the amount of carbon dioxide reduction and, may sell, trade or exchange the credit to an owner or operator of an affected facility which may then be utilized to satisfy the carbon dioxide emission limitations herein.

(h) (1) For carbon dioxide releases not otherwise reduced or mitigated, the owner or operator shall mitigate emissions in excess of the allowable emissions set forth herein by paying to the state corporation commission the sum of \$3 for each ton of carbon dioxide emissions from the affected facility which are in excess of the allowable limitations set forth herein. Consistent with the methods required under K.A.R. 28-19-202, the owner or operator of an affected facility shall determine such emissions which are greater than the allowable limitation and shall report the same to the secretary on the date specified in K.A.R. 28-19-202(d)(1). The owner or operator of an affected facility shall remit to the state corporation commission such payment consistent with a determination under this subsection

by the same date. The state corporation commission shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the commission pursuant to such section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the energy efficiency grant programs fund which is hereby created in the state treasury.

(2) Moneys in the energy efficiency grant programs fund shall be expended in accordance with appropriation acts for grants for energy efficiency programs or as otherwise determined by the legislature.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the energy efficiency grant fund interest earnings based on:

(A) The average daily balance of moneys in the energy efficiency grant programs fund for the preceding month; and

(B) the net earnings rate for the pooled money investment portfolio for the preceding month.

(4) All expenditures from the energy efficiency grant programs fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission, or a person or persons designated by the chairperson of the commission, for the purposes set forth in this section.

(i) Before July 1, 2009, the secretary of the Kansas department of health and environment shall adopt such rules and regulations to implement this section and sections 10 and 11, and amendments thereto, including, but not limited to, monitoring, reporting and record keeping requirements, consistent herewith as deemed necessary to ensure conformance with the provisions of this section and section 11, and amendments thereto. The secretary shall consult with the state corporation commission in the promulgation of such rules and regulations. The secretary shall not defer nor delay the issuance of any construction permit pursuant to the Kansas air quality act, and amendments thereto, pending the establishment of such rules and regulations. The limitations under this act shall not be set forth in any construction or operating permit to be issued under the Kansas air quality act.