

## HOUSE Substitute for SENATE BILL No. 148

By Committee on Energy and Utilities

3-24

10 AN ACT concerning energy; relating to conservation and electric gen-  
11 eration, transmission and efficiency and air emissions; amending  
12 K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007 Supp. 65-  
13 3005, 65-3008a, 66-1,184 and 74-616 and repealing the existing  
14 sections.

15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. ~~(a) The owner or operator of a new pulverized coal~~  
18 ~~electricity generating unit which is constructed in Kansas after the effec-~~  
19 ~~tive date of this act, has 1400 megawatts or more nameplate capacity and~~  
20 ~~is co-located with an existing coal-fired electric generating unit in western~~  
21 ~~Kansas that has greater than 325 megawatts nameplate capacity shall,~~  
22 ~~within five years after the date of commencement of commercial opera-~~  
23 ~~tion of the new unit reduce, or mitigate or offset, the annual release of~~  
24 ~~carbon dioxide from the new unit to a level equal to not more than 70%~~  
25 ~~of the statewide average annual carbon dioxide release rate of 2,260 lbs/~~  
26 ~~megawatt hours for all Kansas coal-fired electricity generation. For such~~  
27 ~~purpose, all renewable resources commencing operation after January 1,~~  
28 ~~2000, that the owner or operator owns or energy from renewable re-~~  
29 ~~sources that the owner or operator is under contract to purchase shall~~  
30 ~~qualify for mitigation credit for meeting the required reduction levels. In~~  
31 ~~addition, the owner or operator of the unit shall use reasonable efforts to~~  
32 ~~promote, develop or participate in cost-effective local or regional envi-~~  
33 ~~ronmental and energy technology projects that will or have the potential~~  
34 ~~to reduce, utilize, displace or sequester carbon dioxide in addition to the~~  
35 ~~required reduction or mitigation. The limitations under this subsection~~  
36 ~~shall not be set forth in or a condition of any construction or operating~~  
37 ~~permit issued under the Kansas air quality act.~~

38 ~~—(b) Any new~~ **[(a) Any]** pulverized coal electricity generating ~~unit~~ **[fa-**  
39 **cility]** which is constructed in Kansas after the effective date of this act,  
40 has 1400 megawatts or more nameplate capacity and is co-located with  
41 an existing coal-fired electric generating unit in western Kansas that has  
42 greater than 325 megawatts nameplate capacity shall meet the following  
43 emission limits: (1) Nitrogen oxides, an annual rate of 0.050 lbs/mmBtu;

1 and (2) sulfur dioxide, an annual rate of 0.065 lbs/mmBtu for low-sulfur  
2 coal (coal having a scrubber inlet emission rate less than 0.9 lb/mmBtu)  
3 or 0.085 lbs/mmBtu for high-sulfur coal (coal having a scrubber inlet  
4 emission rate equal to or greater than 0.9 lb/mmBtu).

5 **[(b) The emission limits in this section shall be set forth in the**  
6 **construction permit pursuant to the Kansas air quality act.]**

7 New Sec. 2. (a) As used in this section “public utility” means an  
8 electric public utility, as defined in K.S.A. 66-101a, and amendments  
9 thereto, but does not include any municipally owned or operated electric  
10 utility.

11 (b) Each public utility selling energy at retail shall, no later than July  
12 1, 2009, develop and submit to the state corporation commission for ap-  
13 proval a retail tariff providing for the purchase by the utility’s retail cus-  
14 tomers of energy from a **[commercial]** wind generation resource. Such  
15 wind generation resource shall be either owned by the public utility or  
16 owned by another generator from which the public utility or its member-  
17 owned wholesale provider purchases the energy. ~~For those retail custom-~~  
18 ~~ers who elect to take service under the tariff, the public utility shall be~~  
19 ~~allowed, in its discretion, to provide energy to the customer only when~~  
20 ~~energy is available from the wind energy resource. [If a public utility~~  
21 ~~selling energy at retail does not own wind generation and does not~~  
22 ~~purchase wind energy from a commercial wind generator, and if~~  
23 ~~the utility’s member-owned wholesale provider, if any, owns no~~  
24 ~~wind generation, the public utility shall not be required to submit~~  
25 ~~such tariff for approval.]~~

26 (c) Each public utility shall develop energy efficiency and load man-  
27 agement programs which provide information, technical assistance and  
28 incentives to each type of customer and customer class to control energy  
29 use. No later than July 1, 2010, each public utility shall submit to the  
30 state corporation commission a report setting forth the elements of the  
31 utility’s energy efficiency and load management programs.

32 (d) Each public utility shall develop, or work with regional or local  
33 organizations to develop, and implement a voluntary conservation pro-  
34 gram to assist businesses and institutions in: (1) Inventorying and as-  
35 sessing the emissions of greenhouse gases from purchased electricity, heat  
36 or steam and, where feasible, indirect emissions from activities of the  
37 business or institution; and (2) developing methods and practices to re-  
38 duce such emissions while taking into consideration the economic impact  
39 of such methods and practices.

40 **[New Sec. 3. (a) As used in this section:**

41 **[(1) “Electric cooperative utility” means any corporation which**  
42 **sells electric energy at retail and which is organized under the**  
43 **electric cooperative act, K.S.A. 17-4601 et seq., and amendments**

1 thereto, or becomes subject to the electric cooperative act in the  
2 manner in such act.

3 [(2) “Generation and transmission utility” means any public  
4 utility operating a pulverized coal electricity generating facility  
5 which is constructed in Kansas after the effective date of this act,  
6 has 1,400 megawatts or more nameplate capacity and is co-located  
7 with an existing coal-fired electric generating unit in western Kan-  
8 sas that has greater than 325 megawatts nameplate capacity.

9 [(3) “Municipal utility” means any Kansas municipality which  
10 owns or operates an electric utility and sells electric energy at  
11 retail.

12 [(4) “Public utility” means an electric public utility as defined  
13 in K.S.A. 66-101a, and amendments thereto.

14 [(b) Upon request by any municipal utility or any electric co-  
15 operative utility to purchase electric energy from a generation and  
16 transmission utility, the generation and transmission utility shall  
17 make application to the southwest power pool to make a deter-  
18 mination of the transmission line upgrades necessary to deliver the  
19 purchased electricity to such municipal utility or electric cooper-  
20 ative utility and the appropriate cost recovery mechanism under  
21 southwest power pool tariffs and rules. Costs of studies or up-  
22 grades, if any, shall be the responsibility of the requesting munic-  
23 ipal utility or electric cooperative utility.]

24 New Sec. ~~3~~ [4.] As used in sections ~~3 through 7~~ [4 through 8], and  
25 amendments thereto:

26 (a) “ASHRAE” means American society of heating, refrigerating and  
27 air-conditioning engineers, Inc. standard 90.1-2004.

28 (b) “Energy star” means the joint program of the United States en-  
29 vironmental protection agency and the United States department of en-  
30 ergy which labels certain products that meet energy efficiency standards  
31 adopted for such products.

32 (c) “IECC” means the 2006 international energy conservation code.

33 (d) “New state building” means any building or structure which is  
34 constructed by the state or any agency of the state and the construction  
35 of which commences on or after July 1, 2009.

36 New Sec. ~~4~~ [5.] The secretary of administration shall adopt rules  
37 and regulations for state agencies for the purchase of products and equip-  
38 ment, including, but not limited to, appliances, lighting fixtures and bulbs,  
39 and computers, which meet energy efficiency guidelines which are not  
40 less than the guidelines adopted for such products to qualify as an energy  
41 star product if the projected cost savings for the useful life of such prod-  
42 ucts and equipment is equal to or greater than the additional cost com-  
43 pared to functionally equivalent such products and equipment of lower

1 efficiency.

2 New Sec. ~~5~~ [6.] (a) The department of administration shall collect  
3 data on energy consumption and costs for all state-owned and leased real  
4 property and the secretary of administration shall submit a written report  
5 to the legislature on or before the first day of the 2009 regular session of  
6 the legislature and on or before the first day of each ensuing regular  
7 session of the legislature identifying state-owned or leased real property  
8 locations in which an excessive amount of energy is being used in ac-  
9 cordance with rules and regulations adopted by the secretary of admin-  
10 istration concerning energy efficiency performance standards for state-  
11 owned or leased real property.

12 (b) The secretary of administration shall not approve a new lease or  
13 a renewal or extension of an existing lease of non-state owned real prop-  
14 erty unless the lessor has submitted an energy audit for such real property  
15 that is the subject of such lease. The secretary of administration shall  
16 adopt rules and regulations establishing energy efficiency performance  
17 standards which shall apply to leased space and improvements which the  
18 lessor shall be required to address based on such energy audit.

19 New Sec. ~~6~~ [7.] (a) Within the limitations of appropriations therefor,  
20 the Kansas energy office of the state corporation commission shall de-  
21 velop and increase the participation of school districts and local govern-  
22 ments in the facilities conservation improvements program (FCIP) pur-  
23 suant to K.S.A. 75-37,125, and amendments thereto.

24 (b) The state corporation commission shall strongly encourage state  
25 agencies which operate and maintain state-owned buildings that are not  
26 participating in the FCIP to participate in the FCIP pursuant to K.S.A.  
27 75-37,125, and amendments thereto, on or before December 1, 2010.

28 New Sec. ~~7~~ [8.] The secretary of administration shall adopt rules  
29 and regulations prescribing energy efficiency performance standards re-  
30 quiring that all new construction and, to the extent possible, renovated  
31 state-owned buildings, be designed and constructed to achieve energy  
32 consumption levels that are at least 10% below the levels established  
33 under the ASHRAE standard or the IECC, as appropriate, if such levels  
34 of energy consumption are life-cycle cost-effective for such buildings and  
35 also recommending that new and, to the extent possible, renovated school  
36 and municipal buildings meet the same requirements.

37 New Sec. ~~8~~ [9.] (a) There is hereby established the Kansas electric  
38 generation, science and technology commission. The commission shall be  
39 made up of the following 15 members:

40 (1) Chairperson of the house committee on energy and utilities, or  
41 the chairperson's appointee, to be appointed from the house committee  
42 on energy and utilities, or its successor, for the appointee's legislative  
43 term;

- 1     (2) vice-chairperson of the house committee on energy and utilities,
- 2     or the vice-chairperson's appointee, to be appointed from the house com-
- 3     mittee on energy and utilities, or its successor, for the appointee's legis-
- 4     lative term;
- 5     (3) ranking minority member of the house committee on energy and
- 6     utilities, or the ranking minority member's appointee, to be appointed
- 7     from the house committee on energy and utilities, or its successor, for
- 8     the appointee's legislative term;
- 9     (4) chairperson of the senate committee on utilities, or the chairper-
- 10    son's appointee, to be appointed from the senate committee on utilities,
- 11    or its successor, for the appointee's legislative term;
- 12    (5) vice-chairperson of the senate committee on utilities, or the vice-
- 13    chairperson's appointee, to be appointed from the senate committee on
- 14    utilities, or its successor, for the appointee's legislative term;
- 15    (6) ranking minority member of the senate committee on utilities, or
- 16    the ranking minority member's appointee, to be appointed from the sen-
- 17    ate committee on utilities, or its successor, for the appointee's legislative
- 18    term;
- 19    (7) chief of energy operations of the state corporation commission
- 20    who shall serve as a nonvoting member of the commission;
- 21    (8) director of the division of environment in the Kansas department
- 22    of health and environment who shall serve as a nonvoting member of the
- 23    commission;
- 24    (9) one member appointed by the governor;
- 25    (10) two members appointed by the speaker of the house of
- 26    representatives;
- 27    (11) one member appointed by the minority leader of the house of
- 28    representatives;
- 29    (12) two members appointed by the president of the senate; and
- 30    (13) one member appointed by the minority leader of the senate.
- 31    (b) Appointments made in (a)(9) through (a)(13) shall have one of
- 32    the following qualifications, but no more than two members appointed
- 33    shall fall into any one qualification category:
- 34      (1) Expertise in global greenhouse gas regulation or practices or
- 35      climatology;
- 36      (2) expertise in energy conservation;
- 37      (3) expertise in baseload generation and regulation; or
- 38      (4) expertise in renewable energy resources.
- 39    (c) The chairperson of the house committee on energy and utilities,
- 40    or its successor, or the chairperson's appointee, shall call the first meeting,
- 41    at which time the members shall elect the chairperson and vice-chair-
- 42    person of the commission. The commission shall meet at least four times
- 43    a year on call of the chairperson. A majority of the members of the com-

1 mission or their appointees shall constitute a quorum for the exercise of  
2 powers conferred upon the commission.

3 (d) The commission is hereby granted such specific powers as are  
4 necessary to carry out the functions enumerated in this section. The com-  
5 mission shall examine issues related to electric service in this state, in-  
6 cluding, but not limited to:

7 (1) The actions of federal and regional entities regarding electric gen-  
8 eration and transmission;

9 (2) the obligations of all entities that generate, transmit or distribute  
10 electricity;

11 (3) the economic impact of generation, transmission and distribution  
12 of electricity on community economic development and on electric rates  
13 for various classes of customers;

14 (4) the impact of electric generation and transmission on the state's  
15 environment and types of remediation that may be required to limit un-  
16 desirable impacts;

17 (5) the social impact on Kansas residents of various methods of gen-  
18 eration and transmission of electricity;

19 (6) the impact on state and local tax revenues of the various means  
20 of generating and transmitting electricity;

21 (7) the adequacy of the state's capacity to generate electricity in light  
22 of current and future needs of the state, region and nation;

23 (8) the impact of conservation on the need for expansion of electric  
24 generation capacity in the short and long term;

25 (9) the fuel portfolio balance of the state's electric generation  
26 facilities;

27 (10) the effectiveness of existing incentives for renewable energy  
28 investment;

29 (11) other states' existing incentives for renewable energy investment;  
30 and

31 (12) the reports and recommendations of the electricity committee  
32 of the Kansas energy council.

33 (e) The commission shall submit a preliminary written report of the  
34 activities and recommendations of the commission to the house commit-  
35 tee on energy and utilities and the senate committee on utilities on or  
36 before the first day of the 2009 regular session of the legislature and shall  
37 submit subsequent written reports on or before the first day of each  
38 subsequent regular session of the legislature. The commission shall sub-  
39 mit a final written report of its activities and recommendations on or  
40 before the first day of the 2012 regular session of the legislature. The  
41 final written report of the commission shall include, but not be limited  
42 to, recommendations for:

43 (1) New incentives for development of a diversified electricity gen-

- 1   eration portfolio;
- 2   (2)   an appropriate energy generation portfolio goal, or series of goals,
- 3   taking into consideration regional and national markets;
- 4   (3)   laws, rules and regulations, and policies needed to facilitate di-
- 5   versification of the electricity generation portfolio; and
- 6   (4)   any additional studies related to the commission's charge that
- 7   might appropriately be undertaken by the Kansas research universities.
- 8   (f)   The commission may receive and expend moneys appropriated to
- 9   the commission from the public service regulation fund created by K.S.A.
- 10   66-1a01, and amendments thereto, and moneys received from any other
- 11   source, whether public or private, to further the purposes of this section.
- 12   (g)   Commission members shall be paid compensation, subsistence
- 13   allowances, mileage and other expenses as provided by K.S.A. 75-3223,
- 14   and amendments thereto, for each day of actual attendance at any meet-
- 15   ing of the commission or any subcommittee meeting approved by the
- 16   commission.
- 17   (h)   The state corporation commission shall provide assistance to the
- 18   commission. Each other state agency shall provide assistance to the com-
- 19   mission as may be requested by the commission.
- 20   (i)   The provisions of this section shall expire on December 31, 2011,
- 21   unless extended by statute.
- 22   New Sec. ~~9~~ **[10.]** As used in this section:
- 23   (a) (1) "Affected facility" means a ~~fossil-fuel-fired~~ **[coal-fired]** steam
- 24   electricity generating unit commencing operation after January 1, 2008,
- 25   of more than 250 million British thermal units per hour of heat input
- 26   other than:
- 27   (A)   An affected facility owned or operated by the federal government;
- 28   or
- 29   (B)   an affected facility on tribal lands.
- 30   (2)   "Best available control technology" means an emissions limitation,
- 31   including a visible emission standard, based on the maximum degree of
- 32   reduction for each pollutant subject to regulation under this section which
- 33   would be emitted from any proposed major stationary source or major
- 34   modification which the secretary, on a case-by-case basis, taking into ac-
- 35   count energy, environmental and economic impacts and other costs, de-
- 36   termines is achievable for such source or modification through application
- 37   of production processes or available methods, systems and techniques,
- 38   including fuel cleaning or treatment or innovative fuel combustion tech-
- 39   niques for control of such pollutant. In no event shall application of best
- 40   available control technology result in emissions of any pollutant which
- 41   would exceed the emissions allowed by any applicable standard under 40
- 42   C.F.R. parts 60 and 61. If the secretary determines that technological or
- 43   economic limitations on the application of measurement methodology to

1 a particular emissions unit would make the imposition of an emissions  
2 standard infeasible, a design, equipment, work practice, operational stan-  
3 dard or combination thereof, may be prescribed instead to satisfy the  
4 requirement for the application of best available control technology. Such  
5 standard shall, to the degree possible, set forth the emissions reduction  
6 achievable by implementation of such design, equipment, work practice  
7 or operation, and shall provide for compliance by means which achieve  
8 equivalent results.

9 (b) In the event rules and regulations regulating the emission of car-  
10 bon dioxide from affected facilities are established in accordance with  
11 subsection (b)(1) of K.S.A. 65-3005, and amendments thereto, the owner  
12 or operator of an affected facility shall engage in the capture or reduction  
13 of carbon dioxide using the best available control technology, or such  
14 other means or methodology proven to mitigate the emission of carbon  
15 dioxide from the affected facility. If best available control technology is  
16 applied, the owner or operator shall not be required to reapply best avail-  
17 able control technology thereafter unless otherwise required because of  
18 a major modification to the affected facility. The issuance of any air permit  
19 shall not be delayed or deferred pending the establishment of any rules  
20 and regulations regulating carbon dioxide.

21 New Sec. ~~10~~ [11.] (a) (1) By the year 2012, for each public utility,  
22 the nameplate capacity of the renewable electric generation facilities in-  
23 cluded in the public utility's generation portfolio, whether owned by the  
24 public utility or contracted for energy purchase by the public utility, shall  
25 be no less than 10% of the public utility's peak load, expressed in me-  
26 gawatts, in the state of Kansas, for a three-year average for the 2008, 2009  
27 and 2010 calendar years.

28 (2) By the year 2016, for each public utility, the nameplate capacity  
29 of the renewable electric generation facilities included in the public util-  
30 ity's generation portfolio, whether owned by the public utility or con-  
31 tracted for energy purchase by the public utility, shall be no less than  
32 15% of the public utility's peak load, expressed in megawatts, in the state  
33 of Kansas, for a three-year average for the 2012, 2013 and 2014 calendar  
34 years.

35 (3) By the year 2020, for each public utility, the nameplate capacity  
36 of the renewable electric generation facilities included in the public util-  
37 ity's generation portfolio, whether owned by the public utility or con-  
38 tracted for energy purchase by the public utility, shall be no less than  
39 20% of the public utility's peak load, expressed in megawatts, in the state  
40 of Kansas, for a three-year average for the 2016, 2017 and 2018 calendar  
41 years.

42 (b) The state corporation commission shall establish rules and regu-  
43 lations to govern reporting requirements and prevention of duplication



1 of the application of the requirements of this section.

2 (c) As used in this section:

3 (1) “Public utility” means an electric public utility, as defined in  
4 K.S.A. 66-101a, and amendments thereto, but does not include any por-  
5 tion of any municipally owned or operated electric utility; and

6 (2) “renewable electric generation facilities” means facilities gener-  
7 ating electricity utilizing renewable energy resources or technologies, as  
8 defined in K.S.A. 79-201, and amendments thereto, and the capacity of  
9 all net metering systems operating under the net metering and easy con-  
10 nection act.

11 New Sec. ~~11~~ **[12.]** Sections ~~11 through 27~~ **[12 through 28]**, and  
12 amendments thereto, shall be known and may be cited as the net meter-  
13 ing and easy connection act.

14 New Sec. ~~12~~ **[13.]** As used in the net metering and easy connection  
15 act:

16 (a) “Avoided energy cost” means the current average cost of fuel and  
17 purchased energy for the preceding 12 months for the utility, or in the  
18 case of a non-generating utility, for such utility’s wholesale power sup-  
19 plier, as defined by the governing body with jurisdiction over any munic-  
20 ipal electric utility, electric cooperative utility or electric public utility.

21 (b) “Commission” means the state corporation commission.

22 (c) “Customer-generator” means the owner or operator of a qualified  
23 electric energy generation unit which:

24 (1) Is powered by solar thermal sources or photovoltaic cells and  
25 panels;

26 (2) has an electrical generating system with a capacity of not more  
27 than 100 kilowatts;

28 (3) is located on a premises owned, operated, leased or otherwise  
29 controlled by the customer-generator;

30 (4) is interconnected and operates in parallel phase and synchroni-  
31 zation with a retail electric supplier and has been approved by such retail  
32 electric supplier;

33 (5) is intended primarily to offset part or all of the customer-gener-  
34 ator’s own electrical energy requirements;

35 (6) meets all applicable safety, performance, interconnection and re-  
36 liability standards established by the national electrical code, the national  
37 electrical safety code, the institute of electrical and electronics engineers,  
38 underwriters laboratories, the federal energy regulatory commission and  
39 any local governing authorities; and

40 (7) contains a mechanism accessible by electric utility personnel that  
41 automatically disables the unit and interrupts the flow of electricity back  
42 onto the supplier’s electricity lines in the event that service to the cus-  
43 tomer-generator is interrupted.

1 (d) “Net metering” means using metering equipment sufficient to  
2 measure the difference between the electrical energy supplied to a cus-  
3 tomer-generator by a retail electric supplier and the electrical energy  
4 supplied by the customer-generator to the retail electric supplier over the  
5 applicable billing period.

6 (e) “Retail electric supplier” means any municipal electric utility,  
7 electric cooperative utility or electric public utility which provides retail  
8 electric service in this state.

9 New Sec. ~~13~~ [14.] A retail electric supplier shall:

10 (a) Make net metering available to customer-generators on a first-  
11 come, first-served basis, subject to the following: (1) A supplier shall not  
12 be required to make net metering available in a calendar year if total  
13 rated generating capacity of all applications for interconnection already  
14 approved by the supplier in the calendar year equals or exceeds 1% of  
15 the supplier’s single-hour peak load for the previous calendar year; and  
16 (2) a supplier shall not be required to make net metering available to a  
17 customer-generator if the total rated generating capacity of net metering  
18 systems equals: (A) 5% of the supplier’s Kansas single-hour peak load  
19 during the previous year; or (B) such higher percentage as specified by  
20 the commission, for a public utility, or the governing body, for any other  
21 utility, once the total rated generating capacity of net metering systems  
22 has reach 5% of the supplier’s single-hour peak load during the previous  
23 year;

24 (b) offer to the customer-generator a tariff or contract that is identical  
25 in electrical energy rates, rate structure and monthly charges to the con-  
26 tract or tariff that the customer would be assigned if the customer were  
27 not an eligible customer-generator but shall not charge the customer-  
28 generator any additional standby, capacity, interconnection or other fee  
29 or charge that would not otherwise be charged if the customer were not  
30 an eligible customer-generator; and

31 (c) disclose annually the availability of the net metering program to  
32 each of its customers with the method and manner of disclosure being at  
33 the discretion of the supplier.

34 New Sec. ~~14~~ [15.] A customer-generator’s facility shall be equipped  
35 with sufficient metering equipment that can measure the net amount of  
36 electrical energy produced or consumed by the customer-generator. If  
37 the customer-generator’s existing meter equipment does not meet these  
38 requirements or if it is necessary for the electric supplier to install addi-  
39 tional distribution equipment to accommodate the customer-generator’s  
40 facility, the customer-generator shall reimburse the retail electric supplier  
41 for the costs to purchase and install the necessary additional equipment.  
42 At the request of the customer-generator, such costs may be initially paid  
43 for by the retail electric supplier and any amount equal to not more than

1 the total costs plus a reasonable interest charge may be recovered from  
2 the customer-generator over the course of not more than 12 billing cycles.  
3 Any subsequent meter testing, maintenance or meter equipment change  
4 necessitated by the customer-generator shall be paid for by the customer-  
5 generator.

6 New Sec. ~~15~~ [16.] The utility will supply, own and maintain all nec-  
7 essary meters and associated equipment utilized for billing. In addition,  
8 and for the purposes of monitoring customer generation and load, the  
9 utility may install at its expense, load research metering. The customer  
10 shall supply, at no expense to the utility, a suitable location for meters  
11 and associated equipment used for billing and for load research.

12 New Sec. ~~16~~ [17.] Consistent with the provisions of the net meter-  
13 ing and easy connection act, the net electrical energy measurement shall  
14 be calculated in the following manner:

15 (a) For a customer-generator, a retail electric supplier shall measure  
16 the net electrical energy produced or consumed during the billing period  
17 in accordance with normal metering practices for customers in the same  
18 rate class, by employing a single, bidirectional meter that measures the  
19 amount of electrical energy produced and consumed, by employing mul-  
20 tiple meters that separately measure the customer-generator's consump-  
21 tion and production of electricity or by employing an alternative  
22 technology.

23 (b) If the electricity supplied by the supplier exceeds the electricity  
24 generated by the customer-generator during a billing period, the cus-  
25 tomer-generator shall be billed for the net electricity supplied by the  
26 supplier in accordance with normal practices for customers in the same  
27 rate class.

28 (c) If the electricity generated by the customer-generator exceeds the  
29 electricity supplied by the supplier during a billing period, the customer-  
30 generator shall be billed for the appropriate customer charges for that  
31 billing period in accordance with section ~~13~~ [14], and amendments  
32 thereto, and shall be credited an amount at least equal to 150% of the  
33 avoided energy cost for the excess kilowatt-hours generated during the  
34 billing period, with this credit applied to the following billing period.

35 (d) Any credits granted pursuant to this section shall expire without  
36 any compensation at the earlier of either 12 months after their issuance  
37 or when the customer-generator disconnects service or terminates the  
38 net metering relationship with the supplier.

39 (e) For any electric cooperative utility or municipal electric utility,  
40 upon agreement of the wholesale generator supplying electric energy to  
41 the retail electric supplier, at the option of the retail electric supplier, the  
42 credit to the customer-generator may be provided by the wholesale  
43 generator.

1     New Sec. ~~17~~ [18.] (a) Each qualified electric energy generation unit  
2     used by a customer-generator shall meet all applicable safety, perform-  
3     ance, interconnection and reliability standards established by any local  
4     code authorities, the national electrical code, the national electrical safety  
5     code, the institute of electrical and electronics engineers and underwriters  
6     laboratories for distributed generation. No supplier shall impose any fee,  
7     charge or other requirement not specifically authorized by the net me-  
8     tering and easy connection act or the rules and regulations promulgated  
9     under such act unless the fee, charge or other requirement would apply  
10    to similarly situated customers who are not customer-generators, except  
11    that a retail electric supplier may require that a customer-generator's  
12    system contain a switch, circuit breaker, fuse or other easily accessible  
13    device or feature located in immediate proximity to the customer-gen-  
14    erator's metering equipment that would allow a utility worker the ability  
15    to manually and instantly disconnect the unit from the utility's electric  
16    distribution system.

17    (b) For systems of 10 kilowatts or less, a customer-generator whose  
18    system meets the standards specified by subsection (a) shall not be re-  
19    quired to install additional controls, perform or pay for additional tests or  
20    distribution equipment or purchase additional liability insurance beyond  
21    what is required under subsection (a) and section ~~14~~ [15], and amend-  
22    ments thereto.

23    (c) For customer-generator systems of greater than 10 kilowatts, the  
24    commission for public utilities and the governing body for other utilities,  
25    by rule or equivalent formal action by each respective governing body,  
26    shall:

27    (1) Set forth safety, performance and reliability standards and  
28    requirements; and

29    (2) establish the qualifications for exemption from a requirement to  
30    install additional controls, perform or pay for additional tests or distri-  
31    bution equipment or purchase additional liability insurance.

32    New Sec. ~~18~~ [19.] (a) Applications by a customer-generator for in-  
33    terconnection of the qualified generation unit to the distribution system  
34    shall be accompanied by the plan for the customer-generator's electrical  
35    generating system, including, but not limited to, a wiring diagram and  
36    specifications for the generating unit, and shall be reviewed and re-  
37    sponded to by the retail electric supplier within 30 days after receipt for  
38    systems of 10 kilowatts or less and within 90 days after receipt for all  
39    other systems. Prior to the interconnection of the qualified generation  
40    unit to the supplier's system, the customer-generator will furnish the re-  
41    tail electric supplier a certification from a qualified professional electri-  
42    cian or engineer that the installation meets the requirements of subsec-  
43    tion (a) of section ~~17~~ [18], and amendments thereto. If the application

1 for interconnection is approved by the retail electric supplier and the  
2 customer-generator does not complete the interconnection within one  
3 year after receipt of notice of the approval, the approval shall expire and  
4 the customer-generator shall be responsible for filing a new application.

5 (b) Upon the change in ownership of a qualified electric energy gen-  
6 eration unit, the new customer-generator shall be responsible for filing a  
7 new application under this section.

8 New Sec. ~~19~~. **[20.]** Each retail electric supplier regulated by the  
9 commission shall submit an annual net metering report to the commission  
10 and each other retail electric supplier shall submit the same report to its  
11 respective governing body. For data collection purposes only, non-regu-  
12 lated electric suppliers shall submit the same report to the commission.  
13 The report shall include the following information for the previous cal-  
14 endar year: The total number of customer-generator facilities, the total  
15 estimated generating capacity of its net-metered customer-generators and  
16 the total estimated net kilowatt-hours received from customer-generators.  
17 The supplier shall make such report available to any consumer of the  
18 supplier upon request.

19 New Sec. ~~20~~. **[21.]** Within nine months after the effective date of  
20 the net metering and easy connection act, the commission shall adopt  
21 rules and regulations necessary for the administration of such act for  
22 electric public utilities, which shall include rules and regulations ensuring  
23 that simple contracts will be used for interconnection and net metering.  
24 For systems of 10 kilowatts or less, the application process shall use an  
25 all-in-one document that includes a simple interconnection request, sim-  
26 ple procedures and a brief set of terms and conditions.

27 New Sec. ~~21~~. **[22.]** Within nine months after the effective date of  
28 the net metering and easy connection act, the governing body of an elec-  
29 tric cooperative utility or electric municipal utility shall adopt policies  
30 establishing a simple contract to be used for interconnection and net  
31 metering. For systems of 10 kilowatts or less, the application process shall  
32 use an all-in-one document that includes a simple interconnection re-  
33 quest, simple procedures and a brief set of terms and conditions.

34 New Sec. ~~22~~. **[23.]** For any cause of action relating to any damages  
35 to property or person caused by the generation unit of a customer-gen-  
36 erator or the interconnection thereof, the retail electric supplier shall have  
37 no liability absent clear and convincing evidence of fault on the part of  
38 the supplier.

39 New Sec. ~~23~~. **[24.]** The estimated generating capacity of all net me-  
40 tering systems operating under the provisions of the net metering and  
41 easy connection act shall count towards accomplishment by the respective  
42 retail electric supplier, or the wholesale generator supplying electric en-  
43 ergy to the retail electric supplier, of any renewable energy portfolio tar-

1 get or mandate adopted by the Kansas legislature.

2 New Sec. ~~24~~ [25.] Any costs incurred under the net metering and  
3 easy connection act by a retail electric supplier shall be recoverable in  
4 the utility's rate structure.

5 New Sec. ~~25~~ [26.] No consumer shall connect or operate an electric  
6 generation unit in parallel phase and synchronization with any retail elec-  
7 tric supplier without written approval by such supplier that all of the  
8 requirements under subsection (a) of section ~~18~~ [19.], and amendments  
9 thereto, have been met. For a consumer who violates this provision, a  
10 supplier may immediately and without notice disconnect the electric fa-  
11 cilities of such consumer and terminate such consumer's electric service.

12 New Sec. ~~26~~ [27.] The manufacturer of any electric generation unit  
13 used by a customer-generator may be held liable for any damages to  
14 property or person caused by a defect in the electric generation unit of  
15 a customer-generator.

16 New Sec. ~~27~~ [28.] The seller, installer or manufacturer of any elec-  
17 tric generation unit who knowingly misrepresents the safety aspects of an  
18 electric generation unit may be held liable for any damages to property  
19 or person caused by the electric generation unit of a customer-generator.

20 Sec. ~~28~~ [29.] K.S.A. 2007 Supp. 66-1,184 is hereby amended to read  
21 as follows: 66-1,184. (a) Except as provided in subsection (b), every public  
22 utility which provides retail electric services in this state shall enter into  
23 a contract for parallel generation service with any person who is a cus-  
24 tomer of such utility, upon request of such customer, whereby such cus-  
25 tomer may attach or connect to the utility's delivery and metering system  
26 an apparatus or device for the purpose of feeding excess electrical power  
27 which is generated by such customer's energy producing system into the  
28 utility's system. No such apparatus or device shall either cause damage  
29 to the public utility's system or equipment or present an undue hazard  
30 to utility personnel. Every such contract shall include, but need not be  
31 limited to, provisions relating to fair and equitable compensation on such  
32 customer's monthly bill for energy supplied to the utility by such  
33 customer.

34 (b) (1) For purposes of this subsection:

35 (A) "Utility" means an electric public utility, as defined by K.S.A. 66-  
36 101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-  
37 4603, and amendments thereto, or a nonstock member-owned electric  
38 cooperative corporation incorporated in this state, or a municipally owned  
39 or operated electric utility;

40 (B) "school" means Cloud county community college and Dodge City  
41 community college; and

42 (C) "avoided energy cost" means the average cost of fuel and pur-  
43 chased energy for the preceding 12 months for the utility, or in the case

1 *of a non-generating utility, such utility's wholesale power supplier, as*  
2 *defined by the governing body with jurisdiction over any electric coop-*  
3 *erative utility or electric public utility.*

4 (2) Every utility which provides retail electric services in this state  
5 shall enter into a contract for parallel generation service with any person  
6 who is a customer of such utility, if such customer is a residential customer  
7 of the utility and owns a renewable generator with a capacity of 25 kilo-  
8 watts or less, or is a commercial customer of the utility and owns a re-  
9 newable generator with a capacity of 200 kilowatts or less or is a school  
10 and owns a renewable generator with a capacity of 1.5 megawatts or less.  
11 Such generator shall be appropriately sized for such customer's antici-  
12 pated electric load. A commercial customer who uses the operation of a  
13 renewable generator in connection with irrigation pumps shall not request  
14 more than 10 irrigation pumps connected to renewable generators be  
15 attached or connected to the utility's system. At the customer's delivery  
16 point on the customer's side of the retail meter such customer may attach  
17 or connect to the utility's delivery and metering system an apparatus or  
18 device for the purpose of feeding excess electrical power which is gen-  
19 erated by such customer's energy producing system into the utility's sys-  
20 tem. No such apparatus or device shall either cause damage to the utility's  
21 system or equipment or present an undue hazard to utility personnel.  
22 Every such contract shall include, but need not be limited to, provisions  
23 relating to fair and equitable compensation for energy supplied to the  
24 utility by such customer. Such compensation shall be not less than 100%  
25 of the ~~utility's monthly system average cost of energy per kilowatt hour~~  
26 *avoided energy cost* except that in the case of renewable generators with  
27 a capacity of 200 kilowatts or less, such compensation shall be not less  
28 than 150% of the ~~utility's monthly system average cost of energy per~~  
29 ~~kilowatt hour~~ *avoided energy cost*. A utility may credit such compensation  
30 to the customer's account or pay such compensation to the customer at  
31 least annually or when the total compensation due equals \$25 or more.

32 (3) *A customer-generator, as defined by section ~~12~~ [13], and amend-*  
33 *ments thereto, shall have the option of entering into a contract pursuant*  
34 *to this subsection (b) or utilizing the net metering and easy connection*  
35 *act. The customer-generator shall exercise the option in writing, filed with*  
36 *the utility and shall not be entitled to change the option once it is filed.*

37 (c) The following terms and conditions shall apply to contracts en-  
38 tered into under subsection (a) or (b):

39 (1) The utility will supply, own, and maintain all necessary meters  
40 and associated equipment utilized for billing. In addition, and for the  
41 purposes of monitoring customer generation and load, the utility may  
42 install at its expense, load research metering. The customer shall supply,  
43 at no expense to the utility, a suitable location for meters and associated

1 equipment used for billing and for load research;

2 (2) for the purposes of insuring the safety and quality of utility system  
3 power, the utility shall have the right to require the customer, at certain  
4 times and as electrical operating conditions warrant, to limit the produc-  
5 tion of electrical energy from the generating facility to an amount no  
6 greater than the load at the customer's facility of which the generating  
7 facility is a part;

8 (3) the customer shall furnish, install, operate, and maintain in good  
9 order and repair and without cost to the utility, such relays, locks and  
10 seals, breakers, automatic synchronizer, and other control and protective  
11 apparatus as shall be designated by the utility as being required as suitable  
12 for the operation of the generator in parallel with the utility's system. In  
13 any case where the customer and the utility cannot agree to terms and  
14 conditions of any such contract, the state corporation commission shall  
15 establish the terms and conditions for such contract. In addition, the  
16 utility may install, own, and maintain a disconnecting device located near  
17 the electric meter or meters. Interconnection facilities between the cus-  
18 tomer's and the utility's equipment shall be accessible at all reasonable  
19 times to utility personnel. Upon notification by the customer of the cus-  
20 tomer's intent to construct and install parallel generation, the utility shall  
21 provide the customer a written estimate of all costs that will be incurred  
22 by the utility and billed to the customer to accommodate the intercon-  
23 nection. The customer may be required to reimburse the utility for any  
24 equipment or facilities required as a result of the installation by the cus-  
25 tomer of generation in parallel with the utility's service. The customer  
26 shall notify the utility prior to the initial energizing and start-up testing  
27 of the customer-owned generator, and the utility shall have the right to  
28 have a representative present at such test;

29 (4) the utility may require a special agreement for conditions related  
30 to technical and safety aspects of parallel generation; and

31 (5) the utility may limit the number and size of renewable generators  
32 to be connected to the utility's system due to the capacity of the distri-  
33 bution line to which such renewable generator would be connected, and  
34 in no case shall the utility be obligated to purchase an amount greater  
35 than 4% of such utility's peak power requirements.

36 (d) Service under any contract entered into under subsection (a) or  
37 (b) shall be subject to either the utility's rules and regulations on file with  
38 the state corporation commission, which shall include a standard inter-  
39 connection process and requirements for such utility's system, or the cur-  
40 rent federal energy regulatory commission interconnection procedures  
41 and regulations.

42 (e) In any case where the owner of the renewable generator and the  
43 utility cannot agree to terms and conditions of any contract provided for



1 by this section, the state corporation commission shall establish the terms  
2 and conditions for such contract.

3 (f) The governing body of any school desiring to proceed under this  
4 section shall, prior to taking any action permitted by this section, make a  
5 finding that either: (1) Net energy cost savings will accrue to the school  
6 from such renewable generation over a 20-year period; or (2) that such  
7 renewable generation is a science project being conducted for educational  
8 purposes and that such project may not recoup the expenses of the project  
9 through energy cost savings. Any school proceeding under this section  
10 may contract or enter into a finance, pledge, loan or lease-purchase agree-  
11 ment with the Kansas development finance authority as a means of fi-  
12 nancing the cost of such renewable generation.

13 (g) For the purpose of meeting the ~~governor's stated goal of produ-~~  
14 ~~ing 10% of the state's electricity by wind power by 2010 and 20% by 2020,~~  
15 ~~requirements of section 10 [11], and amendments thereto,~~ the parallel  
16 generation of electricity provided for in this section shall be included as  
17 part of the state's *renewable* energy generation ~~by wind power~~.

18 (h) *The provisions of the net metering and easy connection act shall*  
19 *not preclude the state corporation commission from approving net me-*  
20 *tering tariffs upon request of an electric utility for other methods of re-*  
21 *newable generation not prescribed in subsection (c)(1) of section 12 [13],*  
22 *and amendments thereto.*

23 Sec. ~~29~~ [30.] K.S.A. 2007 Supp. 65-3005 is hereby amended to read  
24 as follows: 65-3005. (a) The secretary shall have the power to:

25 ~~(a)~~ (1) Adopt, amend and repeal rules and regulations implementing  
26 and consistent with this act.

27 ~~(b)~~ (2) Hold hearings relating to any aspect of or matter in the ad-  
28 ministration of this act concerning air quality control, and in connection  
29 therewith, compel the attendance of witnesses and the production of  
30 evidence.

31 ~~(c)~~ (3) Issue such orders, permits and approvals as may be necessary  
32 to effectuate the purposes of this act and enforce the same by all appro-  
33 priate administrative and judicial proceedings.

34 ~~(d)~~ (4) Require access to records relating to emissions which cause  
35 or contribute to air pollution.

36 ~~(e)~~ (5) Prepare and develop a comprehensive plan or plans for the  
37 prevention, abatement and control of air pollution originating in Kansas  
38 that affects air quality in Kansas or in other states or both.

39 ~~(f)~~ (6) Adopt rules and regulations governing such public notification  
40 and comment procedures as authorized by this act.

41 ~~(g)~~ (7) Encourage voluntary cooperation by persons or affected  
42 groups to achieve the purposes of this act.

43 ~~(h)~~ ~~(1)~~ (8) (A) Encourage local units of government to handle air

1 pollution problems within their respective jurisdictions and on a coop-  
2 erative basis; ~~(2)~~ (B) provide technical and consultative assistance there-  
3 for; and ~~(3)~~ (C) enter into agreements with local units of government to  
4 administer all or part of the provisions of the Kansas air quality act in the  
5 units' respective jurisdictions.  
6 ~~(4)~~ (9) Encourage and conduct studies, investigations and research  
7 relating to air contamination and air pollution and their causes, effects,  
8 prevention, abatement and control.  
9 ~~(5)~~ (10) Encourage air contaminant emission sources to voluntarily  
10 implement strategies, including the development and use of innovative  
11 technologies, market-based principles and other private initiatives to re-  
12 duce or prevent pollution.  
13 ~~(6)~~ (11) Determine by means of field studies and sampling the degree  
14 of air contamination and air pollution in the state and the several parts  
15 thereof.  
16 ~~(7)~~ (12) Establish ambient air quality standards for the state as a whole  
17 or for any part thereof.  
18 ~~(8)~~ (13) Collect and disseminate information and conduct educa-  
19 tional and training programs relating to air contamination and air  
20 pollution.  
21 ~~(9)~~ (14) Advise, consult and cooperate with other agencies of the  
22 state, local governments, industries, other states, interstate or interlocal  
23 agencies, and the federal government, and with interested persons or  
24 groups.  
25 ~~(10)~~ (15) Accept, receive and administer grants or other funds or gifts  
26 from public and private entities, including the federal government, for  
27 the purpose of carrying out any of the functions of this act. Such funds  
28 received by the secretary pursuant to this section shall be deposited in  
29 the state treasury to the account of the department of health and  
30 environment.  
31 ~~(11)~~ (16) Enter into contracts and agreements with other state agen-  
32 cies or subdivisions, local governments, other states, interstate agencies,  
33 the federal government or its agencies or private entities as is necessary  
34 to accomplish the purposes of the Kansas air quality act.  
35 ~~(12)~~ (17) Conduct or participate in intrastate or interstate emissions  
36 trading programs or other programs that demonstrate equivalent air qual-  
37 ity benefits for the prevention, abatement and control of air pollution in  
38 Kansas or in other states or both.  
39 ~~(13)~~ (18) Prepare and adopt a regional haze plan as may be necessary  
40 to prevent, abate and control air pollution originating in Kansas that af-  
41 fects air quality in Kansas or in other states or both. Any regional haze  
42 plan prepared by the secretary shall be no more stringent than is required  
43 by 42 U.S.C. 7491.

1 ~~(s)~~ (19) Participate in the activities of any visibility transport com-  
2 mission established under 42 U.S.C. 7492. The secretary shall report to  
3 the governor and the legislature on the activities of any such visibility  
4 transport commission annually.

5 (b) *It is the policy of this state to prevent the deterioration of air*  
6 *quality in accordance with the following:*

7 (1) *The secretary shall not in the exercise of powers and duties, except*  
8 *as provided below, promulgate any rule and regulation, or issue any order*  
9 *or take any other action under any provision of the Kansas air quality*  
10 *act or other provision of law, that is more stringent, restrictive or expan-*  
11 *sive than required by the federal clean air act (42 U.S.C. 7401 et seq.) or*  
12 *any rule and regulation adopted by the United States environmental pro-*  
13 *tection agency under the federal clean air act, as amended. If the secretary*  
14 *determines that a more stringent, restrictive or expansive rule and regu-*  
15 *lation is necessary, the secretary may implement the rule and regulation*  
16 *only after approval by an act of the legislature. Nothing herein shall pre-*  
17 *clude the secretary and applicant or permittee from concurring with a*  
18 *more stringent, restrictive or expansive condition in a permit to construct*  
19 *or operate a stationary source.*

20 (2) *The restrictions of the secretary's powers herein shall not apply*  
21 *to: (A) Actions by the secretary to prevent designation of an area as a*  
22 *nonattainment area by the United States environmental protection*  
23 *agency; or (B) an implementation plan developed by the secretary to bring*  
24 *a nonattainment area into compliance or to maintain compliance as that*  
25 *plan is implemented within the nonattainment area.*

26 (3) *For any application for a permit required by federal or state law,*  
27 *the secretary shall not deny or delay the issuance of such permit when*  
28 *the requirements of this act have been met.*

29 (c) *In as much as K.S.A. 65-3012, and amendments thereto, does not*  
30 *now apply, nor has it ever been applicable, to the air quality permitting*  
31 *process, the secretary may not use the emergency powers granted by*  
32 *K.S.A. 65-3012, and amendments thereto, in the air quality permitting*  
33 *process, nor any powers or discretion under any other statute not strictly*  
34 *applicable to the air quality permitting process.*

35 (d) *Any action by the secretary on any application filed after January*  
36 *1, 2006, and before the effective date of this act, which seeks the issuance,*  
37 *modification, amendment, revision or renewal of any approval or permit,*  
38 *and which is still the subject of any administrative or judicial review*  
39 *proceedings, shall be reconsidered by the secretary upon the applicant's*  
40 *or permittee's timely written request, which shall be filed no later than*  
41 *60 days after the effective date of this act. Within 15 days after the ap-*  
42 *plicant or permittee files a written request pursuant hereto, the secretary*  
43 *shall reconsider the secretary's decision, agency action or order and shall*

1 *determine in accordance with the provisions of this act, as amended,*  
2 *whether the issuance, modification, amendment, revision or renewal of*  
3 *any approval or permit requested by the permittee or applicant should*  
4 *be issued, modified, amended, revised or renewed. If the applicant or*  
5 *permittee is aggrieved by the secretary's determination hereunder, the*  
6 *applicant or permittee shall be immediately entitled to judicial review of*  
7 *such agency action by filing a petition for judicial review in the court of*  
8 *appeals within 30 days from the date of the secretary's determination. If*  
9 *the secretary fails to act within the 15 days, the applicant or permittee*  
10 *immediately shall be entitled to seek a writ of mandamus compelling the*  
11 *secretary to act by filing for such writ in the court of appeals. Such pro-*  
12 *ceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and*  
13 *amendments thereto, however the applicant or permittee shall not be re-*  
14 *quired to exhaust any other or additional administrative remedies avail-*  
15 *able within the agency notwithstanding any other provision of law.*

16 Sec. ~~30.~~ [31.] K.S.A. 2007 Supp. 65-3008a is hereby amended to  
17 read as follows: 65-3008a. (a) No permit shall be issued, modified, re-  
18 newed or reopened without first providing the public an opportunity to  
19 comment and request a public hearing on the proposed permit action.  
20 The request for a public hearing on the issuance of a permit shall set  
21 forth the basis for the request and a public hearing shall be held if, in the  
22 judgment of the secretary, there is sufficient reason.

23 (b) The secretary shall affirm, modify or reverse the decision on such  
24 permit after the public comment period or public hearing, *and shall af-*  
25 *firm the issuance of any permit the terms and conditions of which comply*  
26 *with all requirements established by rules and regulations promulgated*  
27 *pursuant to the Kansas air quality act.* Any person who participated in  
28 the public comment process or the public hearing who otherwise would  
29 have standing under K.S.A. 77-611, and amendments thereto, shall have  
30 standing to obtain judicial review of the secretary's final action on the  
31 permit pursuant to the act for judicial review and civil enforcement of  
32 agency actions in the court of appeals. Any such person other than the  
33 applicant for or holder of the permit shall not be required to have ex-  
34 hausted administrative remedies in order to be entitled to review. The  
35 court of appeals shall have original jurisdiction to review any such final  
36 agency action. The record before the court of appeals shall be confined  
37 to the agency record for judicial review and consist of the documentation  
38 submitted to or developed by the secretary in making the final permit  
39 decision, including the permit application and any addenda or amend-  
40 ments thereto, the permit summary, the draft permit, all written com-  
41 ments properly submitted to the secretary, all testimony presented at any  
42 public hearing held on the permit application, all responses by the ap-  
43 plicant or permit holder to any written comments or testimony, the sec-

1   retary's response to the public comments and testimony and the final  
2   permit.

3   (c) When determined appropriate by the secretary, the procedures  
4   set out in subsection (a) may be required prior to the issuance, modifi-  
5   cation, renewal or reopening of an approval.

6   Sec. ~~31~~ **[32.]** K.S.A. 65-3008b is hereby amended to read as follows:  
7   65-3008b. (a) The secretary may suspend or revoke an approval or a per-  
8   mit if the permittee has violated any provision of the approval or the  
9   permit, any provision of this act or any rule and regulation adopted under  
10   this act and applicable to the permitted source.

11   (b) As applicable to the source for which the approval or permit is  
12   sought, the secretary may deny an approval or permit, or a renewal  
13   thereof, if the applicant fails to: (1) Submit a complete application; or (2)  
14   submit an application fee.

15   (c) The secretary may deny a permit for any proposed new stationary  
16   source if the owner or operator of such a source fails to demonstrate to  
17   the satisfaction of the secretary that any other stationary source owned  
18   or operated by such person, or by any entity controlling, controlled by or  
19   under common control with such person, in this state is in compliance,  
20   or meeting a schedule for compliance, with all applicable emission limi-  
21   tations and standards under this act and the federal clean air act, and  
22   amendments thereto.

23   (d) The secretary may modify or reopen an approval or a permit for  
24   cause. The secretary shall reopen a permit whenever requirements under  
25   this act become applicable to a permitted source and three or more years  
26   remain on the original term of the permit. Any permit revision incorpo-  
27   rating a requirement adopted by the secretary shall be effective as soon  
28   as practicable, but not later than 18 months after the promulgation of the  
29   requirement by the United States environmental protection agency.

30   (e) Within 15 days after the issuance of a notice of intent to take any  
31   action authorized by subsection (a), (b), (c) or (d), or within 15 days after  
32   the secretary's written decision to affirm, modify or reverse a permit de-  
33   cision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may  
34   file a request for a hearing with the secretary. Each such notice of intent  
35   shall specify the provision of this act or rule and regulation allegedly  
36   violated, the facts constituting the alleged violation and the secretary's  
37   intended action. Each notice of intent or written decision to affirm, mod-  
38   ify or reverse a permit decision shall state the permittee's right to request  
39   a hearing. Such hearing shall be conducted in accordance with the Kansas  
40   administrative procedure act.

41   (f) The filing of a request by the permittee for an approval or permit  
42   modification, revocation or amendment, or the filing by the permittee of  
43   a notification of planned changes or anticipated noncompliance, does not

1 stay any approval or permit condition.

2 (g) ~~No permit shall be issued, modified, amended, revised or re-~~  
3 ~~newed unless the United States environmental protection agency has cer-~~  
4 ~~tified that such permit complies with the requirements of the federal~~  
5 ~~clean air act, except that a permit may be issued if the United States~~  
6 ~~environmental protection agency has not notified the secretary of the~~  
7 ~~United States environmental protection agency's decision within 45 days~~  
8 ~~after receipt of the proposed permit by such agency. For any operating~~  
9 ~~permit issued in accordance with title V of the federal clean air act, a~~  
10 ~~copy of a permit proposed to be issued and a copy of the application (and~~  
11 ~~any application for a permit modification or renewal) or such portion~~  
12 ~~thereof, including any compliance plan, shall be transmitted to the ad-~~  
13 ~~ministrator of the United States environmental protection agency. Should~~  
14 ~~the administrator of the United States environmental protection agency~~  
15 ~~determine the proposed permit is not in compliance with the requirements~~  
16 ~~of the federal clean air act, including the requirement of an applicable~~  
17 ~~implementation plan, and within 45 days after receipt objects in writing~~  
18 ~~to the issuance of the permit as not in compliance with such requirements,~~  
19 ~~then in such event the secretary shall respond in writing to the adminis-~~  
20 ~~trator. If the administrator of the United States environmental protection~~  
21 ~~agency does not object in writing within 45 days after receipt of the pro-~~  
22 ~~posed permit, the secretary shall issue, amend, revise or renew the permit~~  
23 ~~consistent with the provisions of this act.~~

24 (h) The secretary shall issue or deny the permit (including requests  
25 for modification or to reopen the permit):

26 (1) Within three years of the date the United States environmental  
27 protection agency approves the state permitting program pursuant to the  
28 provisions of the federal clean air act, as amended in November 1990,  
29 for permit applications submitted within the first full year after such date;

30 (2) pursuant to the time schedule provided by title IV (acid rain) of  
31 the 1990 amendments to the federal clean air act, for air contaminant  
32 emission sources subject to that title; or

33 (3) within 18 months after receiving a complete application, in all  
34 other cases.

35 (i) Failure of the secretary to issue or deny the permit, or grant or  
36 deny a request to modify or reopen the permit, within the period stated  
37 in subsection (h) shall not result in the default issuance of a permit, permit  
38 amendment, permit modification or permit renewal nor shall such failure  
39 result in any other entity assuming jurisdiction to act on the permit or  
40 the request.

41 Sec. ~~32~~ **[33.]** K.S.A. 65-3012 is hereby amended to read as follows:  
42 65-3012. (a) Notwithstanding any other provision of this act, the secretary  
43 may take such action *against any existing source* as may be necessary to

1 protect the health of persons or the environment: (1) Upon receipt of  
2 information that the emission of air pollution presents ~~a~~ *an imminent and*  
3 substantial endangerment to the health of persons or to the environment;  
4 or (2) for an imminent or actual violation of this act, any rules and reg-  
5 ulations adopted under this act, any orders issued under this act or any  
6 permit conditions required by this act.

7 (b) The action the secretary may take under subsection (a) includes  
8 but is not limited to:

9 (1) Issuing an order directing the owner or operator, or both, to take  
10 such steps as necessary to prevent the act or eliminate the practice. Such  
11 order may include, with respect to a facility or site, temporary cessation  
12 of operation.

13 (2) Commencing an action to enjoin acts or practices specified in  
14 subsection (a) or requesting the attorney general or appropriate county  
15 or district attorney to commence an action to enjoin those acts or prac-  
16 tices. Upon a showing by the secretary that a person has engaged in those  
17 acts or practices, a permanent or temporary injunction, restraining order  
18 or other order may be granted by any court of competent jurisdiction. An  
19 action for injunction under this subsection shall have precedence over  
20 other cases in respect to order of trial.

21 (3) Applying to the district court in the county in which an order of  
22 the secretary under subsection (b)(1) will take effect, in whole or in part,  
23 for an order of that court directing compliance with the order of the  
24 secretary. Failure to obey the court order shall be punishable as contempt  
25 of the court issuing the order. The application under this subsection for  
26 a court order shall have precedence over other cases in respect to order  
27 of trial.

28 (c) In any civil action brought pursuant to this section in which a  
29 temporary restraining order or preliminary injunction is sought, it shall  
30 not be necessary to allege or prove at any stage of the proceeding that  
31 irreparable damage will occur should the temporary restraining order or  
32 preliminary injunction not be issued or that the remedy at law is inade-  
33 quate, and the temporary restraining order or preliminary injunction shall  
34 issue without such allegations and without such proof.

35 (d) Any order of the secretary pursuant to subsection (b)(1) is subject  
36 to hearing and review in accordance with the Kansas administrative pro-  
37 cedure act.

38 Sec. ~~33~~ **34**. K.S.A. 66-104d is hereby amended to read as follows:  
39 66-104d. (a) As used in this section, “cooperative” means any cooperative;  
40 as defined by K.S.A. 17-4603, and amendments thereto, which has fewer  
41 than 15,000 customers and which provides power principally at retail  
42 corporation organized under the electric cooperative act, K.S.A. 17-4601  
43 et seq., and amendments thereto, or which becomes subject to the electric

1 *cooperative act in the manner therein provided; or any limited liability*  
2 *company or corporation providing electric service at wholesale in the state*  
3 *of Kansas that is owned by four or more electric cooperatives that provide*  
4 *retail service in the state of Kansas; or any customer-owned corporation*  
5 *formed prior to 2004.*

6 (b) Except as otherwise provided in subsection (f), a cooperative may  
7 elect to be exempt from the jurisdiction, regulation, supervision and con-  
8 trol of the state corporation commission by complying with the provisions  
9 of subsection (c).

10 (c) To be exempt under subsection (b), a cooperative shall poll its  
11 members as follows:

12 (1) An election under this subsection may be called by the board of  
13 trustees or shall be called not less than 180 days after receipt of a valid  
14 petition signed by not less than 10% of the members of the cooperative.

15 (2) The proposition for deregulation shall be presented to a meeting  
16 of the members, the notice of which shall set forth the proposition for  
17 deregulation and the time and place of the meeting. Notice to the mem-  
18 bers shall be written and delivered not less than 21 nor more than 45  
19 days before the date of the meeting.

20 (3) If the cooperative mails information to its members regarding the  
21 proposition for deregulation other than notice of the election and the  
22 ballot, the cooperative shall also include in such mailing any information  
23 in opposition to the proposition that is submitted by petition signed by  
24 not less than 1% of the cooperative's members. All expenses incidental  
25 to mailing the additional information, including any additional postage  
26 required to mail such additional information, must be paid by the sig-  
27 natories to the petition.

28 (4) If the proposition for deregulation is approved by the affirmative  
29 vote of not less than a majority of the members voting on the proposition,  
30 the cooperative shall notify the state corporation commission in writing  
31 of the results within 10 days after the date of the election.

32 (5) Voting on the proposition for deregulation shall be by mail ballot.

33 (d) A cooperative exempt under this section may elect to terminate  
34 its exemption in the same manner as prescribed in subsection (c).

35 (e) An election under subsection (c) or (d) may be held not more  
36 often than once every two years.

37 (f) Nothing in this section shall be construed to affect the single cer-  
38 tified service territory of a cooperative or the authority of the state cor-  
39 poration commission, as otherwise provided by law, over a cooperative  
40 with regard to service territory;; charges, *fees or tariffs* for transmission  
41 services;; sales of power for resale, *other than sales between a cooperative,*  
42 *as defined in subsection (a), that does not provide retail electric service*  
43 *and an owner of such cooperative; and wire stringing and transmission*



1 line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-  
2 1,177 et seq., and amendments thereto.

3 (g) (1) Notwithstanding a cooperative's election to be exempt under  
4 this section, the commission shall investigate all rates, joint rates, tolls,  
5 charges and exactions, classifications and schedules of rates of such co-  
6 operative if there is filed with the commission, not more than one year  
7 after a change in such cooperative's rates, joint rates, tolls, charges and  
8 exactions, classifications or schedules of rates, a petition, *in the case of a*  
9 *retail distribution cooperative*, signed by not less than 5% of all the co-  
10 operative's customers or 3% of the cooperative's customers from any one  
11 rate class, *or, in the case of a generation and transmission cooperative,*  
12 *not less than 20% of its members or 5% of the aggregate retail customers*  
13 *of its members*. If, after investigation, the commission finds that such  
14 rates, joint rates, tolls, charges or exactions, classifications or schedules of  
15 rates are unjust, unreasonable, unjustly discriminatory or unduly prefer-  
16 ential, the commission shall have the power to fix and order substituted  
17 therefor such rates, joint rates, tolls, charges and exactions, classifications  
18 or schedules of rates as are just and reasonable.

19 (2) The cooperative's rates, joint rates, tolls, charges and exactions,  
20 classifications or schedules of rates complained of shall remain in effect  
21 subject to change or refund pending the state corporation commission's  
22 investigation and final order.

23 (3) Any customer of a cooperative wishing to petition the commission  
24 pursuant to subsection (g)(1) may request from the cooperative the  
25 names, addresses and rate classifications of all the cooperative's customers  
26 or of the cooperative's customers from any one or more rate classes. The  
27 cooperative, within 21 days after receipt of the request, shall furnish to  
28 the customer the requested names, addresses and rate classifications and  
29 may require the customer to pay the reasonable costs thereof.

30 (h) (1) If a cooperative is exempt under this section, not less than 10  
31 days' notice of the time and place of any meeting of the board of trustees  
32 at which rate changes are to be discussed and voted on shall be given to  
33 all members of the cooperative and such meeting shall be open to all  
34 members.

35 (2) Violations of subsection (h)(1) shall be subject to civil penalties  
36 and enforcement in the same manner as provided by K.S.A. 75-4320 and  
37 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et  
38 seq. and amendments thereto.

39 (i) (1) Any cooperative exempt under this section shall maintain a  
40 schedule of rates and charges at the cooperative headquarters and shall  
41 make copies of such schedule of rates and charges available to the general  
42 public during regular business hours.

43 (2) Any cooperative which fails, neglects or refuses to maintain such

1 copies of schedule of rates and charges under this subsection shall be  
2 subject to a civil penalty of not more than \$500.

3 New Sec. ~~34~~ [35.] (a) For taxable years 2008 and 2009, there shall  
4 be allowed tax credits against the income tax liability imposed upon a  
5 taxpayer pursuant to the Kansas income tax act, in an amount equal to  
6 the following:

7 (1) For nonowner occupied multiple family dwellings, \$100 per  
8 dwelling unit located immediately below the attic space where sufficient  
9 ceiling insulation is installed to achieve an insulation value of R-52; and

10 (2) for nonowner occupied multiple family dwellings, \$300 times the  
11 number of dwelling units served by the system for a newly installed heat-  
12 ing and air conditioning system which replaces an existing system, has a  
13 separate temperature control for each dwelling unit and meets one or  
14 more of the following criteria:

15 (A) Furnace or boiler must meet or exceed 92% AFUE;

16 (B) split systems must meet or exceed SEER 14, EER of 11.5;

17 (C) single package systems must meet or exceed SEER 14;

18 (D) air source heat pumps must meet or exceed HSPF 8, SEER 14  
19 and EER of 11.5; and

20 (E) ground-source heat pumps must meet or exceed:

21 (i) Closed-loop systems—14.1 cooling EER and 3.3 heating coeffi-  
22 cient of performance (COP);

23 (ii) open-loop systems—16.2 EER and 3.6 COP;

24 (iii) direct-expansion systems—15 EER and 3.5 COP; and

25 (iv) all ground-source heat pumps must include a desuperheater,  
26 which preheats water for a water heater, or an integrated water heating  
27 system.

28 (b) If the amount of tax credits allowed pursuant to this section ex-  
29 ceeds the taxpayer's income tax liability for the year in which the ex-  
30 penditures were incurred, the amount thereof which exceeds such tax  
31 liability may be carried over for deduction from the taxpayer's income tax  
32 liability in the next succeeding taxable year or years until the total amount  
33 of the tax credits have been deducted from tax liability, except that no  
34 such tax credits shall be carried over for deduction after the fifth taxable  
35 year succeeding the taxable year in which the expenditures are made.

36 (c) The taxpayer claiming a credit pursuant to this section shall pro-  
37 vide evidence of purchase and installation of the item or items for which  
38 the credit is claimed as required by rules and regulations of the secretary  
39 of revenue.

40 (d) The secretary of revenue shall adopt rules and regulations to im-  
41 plement the provisions of this section.

42 (e) The secretary of revenue shall submit a report to the legislature  
43 regarding utilization of credits claimed pursuant to this section, for pur-

1 poses of evaluation of the program. Such report shall be due on or before  
2 the first day of the 2010 legislative session.

3 New Sec. ~~35~~ [36.] (a) In addition to the income tax credit allowed  
4 pursuant to section ~~34~~ [35], and amendments thereto, for taxable years  
5 2008 and 2009, a taxpayer shall be entitled to a deduction from Kansas  
6 adjusted gross income with respect to: (1) The amortization of the am-  
7 ortizable costs of a new heating and air conditioning system based upon  
8 a period of five years; plus (2) the costs of installation of such new system  
9 spread over five years. For the first taxable year in which such new system  
10 is in use, such deduction shall be an amount equal to 60% of the amor-  
11 tizable costs of such new system plus 60% of the costs of installation of  
12 such new system. For each of the next four taxable years, such deduction  
13 shall be an amount equal to 10% of the amortizable costs of such new  
14 system plus 10% of the costs of installation of such new system.

15 (b) The election of the taxpayer to claim the deduction allowed by  
16 subsection (a) shall be made by filing a statement of such election with  
17 the secretary of revenue in the manner and form and within the time  
18 prescribed by rules and regulations adopted by the secretary.

19 (c) The secretary of revenue shall adopt rules and regulations as  
20 deemed necessary to carry out the provisions of this section.

21 New Sec. ~~36~~ [37.] (a) As used in this section:

22 (1) “Affected unit” means any emissions unit which: (A) Commenced  
23 operation on or after January 1, 2008; (B) generates electricity in this  
24 state; (C) combusts coal in an amount greater than 10% of its total heat  
25 input on a rolling 12-month basis; and (D) is a new unit.

26 (2) “Inlet conditions” means the concentration of mercury in the flue  
27 gas exiting the combustion source prior to application of any air pollution  
28 control device as determined using the coal analysis procedures estab-  
29 lished in the United States environmental protection agency’s mercury  
30 information collection request, as amended.

31 (3) “Mercury” means mercury and mercury compounds in either a  
32 gaseous or particulate form.

33 (b) The secretary of health and environment shall adopt rules and  
34 regulations requiring affected units to achieve 80% or greater reduction  
35 of mercury from the calculated inlet condition of the affected unit.

36 (c) This section shall be part of and supplemental to the Kansas air  
37 quality act.

38 Sec. ~~37~~ [38.] K.S.A. 2007 Supp. 74-616 is hereby amended to read  
39 as follows: 74-616. In addition to other powers and duties provided by  
40 law, in administering the provisions of this act the state corporation com-  
41 mission shall:

42 (a) Adopt rules and regulations necessary for the administration of  
43 this act;

- 1 (b) develop a comprehensive state energy conservation plan and the  
2 procedures for implementing the plan according to federal requirements;  
3 (c) *allow, for commission approved energy efficiency, conservation*  
4 *and demand management programs, at the option of the requesting utility,*  
5 *the capitalization and addition to rate base of investments in and expend-*  
6 *itures for such approved programs;*  
7 (d) make requests for and accept funds and other assistance from  
8 federal agencies for energy conservation and other energy-related activ-  
9 ities in this state, including, but not limited to, the state energy program;  
10 ~~(d)~~ (e) administer federal energy conservation programs in this state;  
11 *and*  
12 ~~(e)~~ (f) prepare an emergency management plan for natural gas and  
13 electric energy to be adopted during activation of emergency support  
14 function 12 of the Kansas response plan established under K.S.A. 48-920  
15 et seq., and amendments thereto, which plan shall include the system of  
16 priorities for natural gas and electric energy allocation and curtailment of  
17 energy resources consumption established under K.S.A. 74-620, and  
18 amendments thereto.  
19 **[New Sec. 39. The state corporation commission and the de-**  
20 **partment of health and environment shall, on an annual basis,**  
21 **identify operators of electric utilities with coal-fired generating**  
22 **capacity greater than 350 MW located in Kansas with carbon di-**  
23 **oxide emissions in excess of 110% of the statewide average emis-**  
24 **sions from coal-fired plants located in Kansas with a capacity**  
25 **greater than 350 MW.]**  
26 New Sec. ~~38.~~ **[40.]** If any provision of this act or its application to  
27 any person or circumstance is held invalid, the invalidity shall not affect  
28 any other provision or application of the act which can be given effect  
29 without the invalid provision or application. To this end the provisions of  
30 this act are severable.  
31 Sec. ~~39.~~ **[41.]** K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A.  
32 2007 Supp. 65-3005, 65-3008a, 66-1,184 and 74-616 are hereby repealed.  
33 Sec. ~~40.~~ **[42.]** This act shall take effect and be in force from and after  
34 its publication in the Kansas register.