

**SUPPLEMENT II TO
PRELIMINARY SUMMARY OF LEGISLATION
2009 KANSAS LEGISLATURE**



This publication contains summaries of selected bills enacted by the Legislature from April 29 through adjournment. Bills that have not yet been signed by the Governor are included.

The first *Preliminary Summary* containing summaries of major bills which were enacted through Tuesday, March 24, was distributed on March 25. An updated supplement to the first *Preliminary Summary* was distributed on April 10.

Highlights, a summary of major legislation in newsletter form, will be prepared and mailed to legislators as soon as possible. *The Summary of Legislation*, which accounts for all bills enacted by the 2009 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website:
<http://www.kslegislature.org/klrd>

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ENERGY AND UTILITIES

2009 Comprehensive Energy Bill

Senate Sub. for Sub. for HB 2014 would have enacted new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment; amended existing law to authorize large electric cooperatives to be deregulated under certain circumstances; enacted renewable energy standards; enacted the Net Metering and Easy Connection Act; amended the Kansas Air Quality Act in regard to its relationship to federal law and in regard to appeals from decisions of and emergency powers of the Secretary of Health and Environment; and directed the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues.

The bill also would have amended the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers; enacted new law establishing a timeframe for the Kansas Corporation Commission's action on certificates of public convenience; amended existing law regarding entities that store hydrocarbons underground; enacted the Compressed Air Energy Storage Act; enacted new law creating access by municipal and cooperative electric utilities to new baseload electric generation capacity; required purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and enacted new law creating the Kansas Energy Resources Commission.

Renewable Energy Standards Act, Net Metering and Easy Connection Act, Compressed Air Energy Storage Act, and Various Other Energy-Related Provisions

Senate Sub. for HB 2369 enacts new law and amends existing law related to energy. The bill:

- Enacts the Renewable Energy Standards Act;
- Enacts the Net Metering and Easy Connection Act;
- Enacts new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amends the parallel generation statute;

Renewable Energy Standards Act, Net Metering and Easy Connection Act, Compressed Air Energy Storage Act, and Various other Energy-Related Provisions—Senate Sub. for HB 2369

- Amends the Kansas Air Quality Act in regard to its relationship to federal law and in regard to emergency authority;
- Amends existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Directs the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues;
- Amends the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;
- Amends existing law regarding entities that store hydrocarbons underground;
- Enacts the Compressed Air Energy Storage Act;
- Requires the purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and
- Requires the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric Power Corporation and the State.

The bill becomes effective upon publication in the *Kansas Register*.

Elements of the bill are described below.

Renewable Energy Standards Act

The bill enacts the Renewable Energy Standards Act that requires electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The Kansas Corporation Commission (KCC) is given broad authority to adopt rules and regulations implementing the standards and establishing enforcement mechanisms including administrative fines.

Renewable energy may be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells

using hydrogen produced by one of the other renewable energy resources; and other sources of energy, not including nuclear power, that become available after enactment of the bill and that are certified as renewable under rules and regulations of the KCC.

The renewable portfolio requirement requires utilities to obtain net renewable generation capacity constituting at least the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits may only be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the Commission.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000, will count as 1.10 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act (also part of the bill) or the parallel generation statute will count toward compliance with the renewable energy requirement.

The KCC is required to allow affected utilities to recover reasonable costs incurred by the utilities to meet the requirements of the Act.

Net Metering and Easy Connection Act

The bill enacts the Net Metering and Easy Connection Act and amends the parallel generation statute. The Net Metering Act requires any investor-owned electric utility to make net metering available to customer-generators under certain circumstances. Renewable energy resources that may be used to generate electricity under the Net Metering Act would be the same as those defined in the Renewable Energy Standards Act. The KCC is authorized to approve net metering tariffs requested by electric utilities for methods of renewable generation not described in the Net Metering Act.

The KCC is required to adopt rules and regulations to implement the Net Metering Act. Electric companies are able to recover costs incurred in connection with compliance with the Net Metering Act.

Customer-generators may utilize either the parallel generation statute or the Net Metering Act. The choice must be made in writing and filed with the company serving the customer-generator. The maximum capacity of generating equipment allowed for use by customer-generators under the Act is 25 kilowatts for residential customers and 200 kilowatts for other customers.

The Act requires that retail electric companies measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter provided at no cost to the customer-generator by the electric company. If the company provides the customer-generator with more power during a billing period than the customer generates, the customer will be billed for the net amount of electricity provided by the company. If the amount of electricity generated by the customer exceeds the amount provided by the company, the net excess electricity generated by the customer will be carried forward from month to month and credited at a ratio of 1:1 against the customer's energy consumption. Credits remaining at the end of the calendar year will expire. Reasonable costs incurred by a utility under the Net Metering Act will be recoverable in the utility's rate structure.

Customers' generating equipment must meet specifications established by the Act including being appropriately sized to the customer-generator's electrical load and complying with specified safety, performance, interconnection and reliability standards. The utility may not require a customer-generator to purchase additional insurance if the net metering facility meets the safety and performance standards in the Act. A utility will not be liable, directly or indirectly, for permitting or continuing to allow an attachment of a net metered facility or for the acts or omissions of a customer-generator that cause loss or injury, including death, to any third party.

An electric company is required to accept on its system only total customer-generator capacity equal to a maximum of one percent of the company's net generation capacity. The KCC is authorized to increase the limit after a hearing.

Energy Efficiency

The bill requires the Secretary of Administration to adopt rules and regulations within 18 months of the effective date of the Act:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008 if such purchases would be life-cycle cost-effective;

- Establishing energy efficiency guidelines for state agencies for the purchase of products and equipment such as appliances, lighting fixtures and bulbs, and computers, that are at least as energy efficient as similar products that qualify for the Energy Star® program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Establishing energy efficiency performance standards for state-owned and leased real property, and requiring state agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary is prohibited from approving, renewing or extending any building lease unless the lessor has submitted an energy audit for the building. Lessors are required to address the performance standards based on the energy audit. On an annual basis, the Secretary must submit a report to the Legislature, the Joint Committee on State Building Construction, the House Committee on Energy and Utilities, and the Senate Committee on Utilities, identifying properties where an excessive amount of energy is being used;
- Prescribing energy efficiency performance standards for construction of state buildings. All new and, to the extent possible, renovated, state-owned buildings must be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2007 or the 2006 International Energy Conservation Code (IECC). Regulations adopted under these provisions apply only if they are life-cycle cost-effective.

The Energy Office of the Kansas Corporation Commission (KCC) must develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP) to the extent that funds are appropriated for that purpose.

Deregulation of Large Electric Cooperatives

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

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies or corporations that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and

- Any member-owned corporation formed prior to 2004.

Those entities and other cooperatives are under the jurisdiction of the KCC for purposes of the Renewable Energy Standards Act.

The bill amends existing law to require that, in the case of a generation and transmission cooperative that elected to be deregulated, a petition signed by at least 20 percent of that cooperative's members or by five percent of the aggregate retail customers of such members would trigger a KCC review of a rate change. In addition, the bill requires cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill also clarifies the statute regarding the portion of members of a retail distribution cooperative who must sign a rate review petition.

Kansas Air Quality Act Amendments

The bill amends the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act unless authorized by the Legislature to do so. The restriction in the bill does not apply to a plan for a nonattainment area under the federal Clean Air Act. The bill also prohibits rules and regulations under the State Act from being enforced in any area of the State prior to the time required under the federal Act. Counties are prohibited from utilizing home rule authority to create exemptions from, or to change the application of, the Kansas Air Quality Act.

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

KSA 65-3012 is amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The new provision authorizes the Secretary of Health and Environment to issue a temporary order directing the owner or operator of the pollution source to take steps necessary to prevent the offending act or to eliminate the offending practice. The order may not exceed 7 days in duration.

When the temporary order is issued, the Secretary may file an action in district court to enjoin the offending activity. Alternatively, the Secretary may request the Attorney General or the appropriate county or district attorney to file for the injunction. In addition, the Secretary may bring suit in any court of competent jurisdiction to immediately restrain the offending acts or practices. The court may issue a temporary or permanent injunction if the Secretary shows that the offending condition or situation exists.

Persons aggrieved by an order of the Secretary issued under the new procedure are entitled to review of the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party is not required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision has precedence over other cases in regard to order of trial.

Joint Committee on Energy and Environmental Policy

The bill requires the Joint Committee on Energy and Environmental Policy to study and make recommendations regarding the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, weatherization, energy conservation, alternative fuel vehicles and state energy programs. The results of these studies will be submitted to the Legislature in 2010 and 2011 as part of the Committee's annual report.

Kansas Electric Transmission Authority

The bill authorizes the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs or other charges for use of facilities owned, financed or administered by KETA and for services rendered by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the Kansas Corporation Commission. Such fees may be charged only to the entity or entities that request services from KETA.

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

Underground Hydrocarbon Storage Wells

The bill amends the law regarding underground hydrocarbon storage wells by adding a definition for "company or operator." The term is defined as any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

Compressed Air Energy Storage Act

The bill establishes a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC is required to adopt rules and regulations addressing issues such as site selection, design and operation criteria, and requirements for monitoring, safety and closure.

The KCC also is authorized to establish rules and regulations establishing fees for permitting, monitoring and inspecting compressed air storage facility operators. Moneys received under the Act will be deposited in the Compressed Air Energy Storage Fund, created by the Act, and used to pay the costs of regulation.

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

The bill creates financial penalties for violations of the Act.

All rules and regulations issued pursuant to the Act must be adopted within 18 months of enactment of the new law.

Kansas Coal Requirement

Any new coal-fired electricity generation facility in Kansas constructed after the effective date of the Act must purchase at least five percent of its coal from Kansas coal mines only if the Kansas coal is cost-competitive to out-of-state coal, is sold on comparable terms and specifications, and is of an acceptable quality for use in the facility. In addition, the requirement does not apply if it would cause the facility to violate its air permit or a contractual obligation.

Settlement Agreement

The bill adds a new provision in the Kansas Air Quality Act to require the Secretary of Health and Environment to approve the air quality permit for Sunflower Electric Power Corporation's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009, between Sunflower and the State of Kansas. The settlement will resolve actions pending before various courts and administrative agencies.

Energy Storage

HR 6011 requests the Kansas Corporation Commission to study and report to the Legislature on several issues related to energy storage. Specifically, the Commission is requested to do the following:

- Convene a group of stakeholders to study energy storage as a cost-effective way to stabilize renewable energy generation, address transmission congestion costs, increase system reliability, and increase the potential for

distributive generation. The Commission is requested to submit a report and recommendations based on that study to the Legislature by January 1, 2010;

- Establish a method of cost recovery and earnings on investments in energy storage devices by electric utilities, and submit a report and recommendations on this method to the Legislature by January 1, 2010; and
- Address cost recovery if energy storage is used in conjunction with generation, including asking the Southwest Power Pool to determine how cost recovery in these circumstances should be treated, and report to the Legislature on such cost recovery by January 1, 2011.

Construction of Electricity Transmission Lines

HR 6018 expresses the Legislature's support for the efforts of the Kansas Electric Transmission Authority (KETA) to facilitate the construction of electricity transmission lines in the State. The resolution also expresses the Legislature's encouragement for KETA to continue participating in proceedings of the Kansas Corporation Commission and the Southwest Power Pool regarding transmission of electricity in Kansas.