

2004 Summary of Legislation on Utilities

Fines and Penalties

SB 309 amends two statutes regarding fines levied on public utilities, pipeline companies, or railroads for violations of law or of orders of the Corporation Commission. Maximum fines will be increased from levels initially established early in the last century. The bill also increases fines for misdemeanors committed by railroads when trains illegally block streets or highways.

Civil Fines. The maximum civil fine that could be imposed by the Corporation Commission for violation of laws and Commission orders under certain circumstances is increased from \$1,000 to \$10,000. The fine schedule created by the bill is as follows:

For violations of KSA 66-104 through 66-140:

Prior Range	New Range
\$100 - \$1,000	No change for: Traditional rate of return and out-of-state phone companies; and municipal, cooperative, non-profit, and water utilities.
	\$100 - \$5,000 for all other public utilities or common carriers (other than motor carriers)

For willful violation or evasion of any law for which a specific penalty is not provided, the maximum fine is reduced in some instances and increased in others as follows:

Prior Range	New Range
\$100 - \$5,000	\$100 - \$2,000 for traditional rate of return and out-of-state phone companies; and municipal, cooperative, non-profit, and water utilities.
	\$100 - \$10,000 for all other public utilities or common carriers (other than motor carriers)

Fines for Illegally Blocking Streets and Highways. The fine schedule for railroad companies whose trains illegally block streets or highways is increased to \$100 (from \$50) if the crossing is blocked from 10 to less than 20 minutes; \$300 (up from \$150) if the crossing is blocked for between 20 to 30 minutes; \$600 (up from \$300) if the crossing is blocked for 30 minutes, and \$600 for each additional 30 minutes.

Security Measures—Recovery of Costs

SB 382 extends the authority of the State Corporation Commission to allow electric and natural gas public utilities to recover costs incurred as a result of implementing security measures for the protection of electric and natural gas production and transmission. The prior expiration date was July 1, 2004. The bill extends the sunset to July 1, 2007.

Electricity Transmission and Generation

HB 2516 enacts new law and amends prior law to provide incentives to increase electric transmission and generating capacity.

New provisions:

- Authorize the Kansas Development Finance Authority (KDFA) to assist electric transmission line owners or operators with marketing of bonds to finance construction and upgrade of transmission lines if a majority

of the cost of construction and upgrade is in Kansas and, if the out-of-state portions are certified by the Kansas Corporation Commission (KCC) to improve reliability and security of the state's transmission system or contribute to the long-term economic well being of the state;

- Provide for the KCC to approve recovery, over a period of 15 years, of capital expenditures for construction or upgrade of transmission lines used for bulk transfer of 34.5 kV or more of electricity under certain circumstances;
- Authorize any entity that constructs a minimum 100 KW electric generation facility to grant or lease interconnection facilities to transmission operators;
- Authorize the KCC to approve:
 - The sale of transmission lines to a FERC-approved independent transmission company or system operator; and
 - Any contract for operation of transmission lines by a FERC-approved independent system operator or regional transmission organization. The KCC would have to afford any proceeds from such a sale or contract the appropriate rate-making treatment, including reasonable sharing of proceeds between ratepayers and the utility;
- Require the KCC to allow utilities to retain 10 percent of net revenue from sales of electricity generated by new or expanded capacity built in a county that had 5 percent or less population growth between the two most recent federal censuses. This provision does not apply to net revenue resulting from the sale of electricity generated from renewable resources and which is addressed under the law;
- Require the KCC to allow electric utilities to include in rates the utility's prudent expenditures for research and development by the utility or for investment in research and development by a nationally recognized research center provided that the research and development expenditures or investments are intended to enhance reliability or efficiency of electric utility service; and
- Define "electric transmission line" to mean any line or extension of a line with an operating voltage of 34.5 kilovolts or more which is at least five miles in length and which is to be used for the bulk transfer of electricity.

Prior law is amended to:

- Define "electric transmission line," for purposes of determining the value of a utility's property during KCC rate-making action, to be any transmission line that is at least five miles long and used for bulk transfer of at least 34.5 kV of electricity. Those transmission lines will be considered to be completed and dedicated to commercial service even though construction is not complete;
- Lower from 69 kV to 34.5 kV the minimum capacity of transmission lines for which a utility may seek determination of rate-making principles from the KCC prior to construction; and
- Authorize KDFA to issue bonds for construction or upgrade of or acquisition of right-of-way for electric transmission lines that are owned and operated by a municipal electric utility or that will be used for the transfer of electricity with an operating voltage of a minimum of 34.5 kV (down from the 69 kV minimum in prior law).

Bonds—Prototype Electrical Generation

HB 2703 amends a statute that authorizes the Kansas Development Finance Authority to issue revenue bonds for the construction, renovation, repair and related costs of one or more facilities that generate electricity solely by the use of hydropower and which meet other statutory requirements. The amendment adds a second type of facility to those for which revenue bonds may be issued. The type of facilities added to the statute are those facilities or portions thereof that generate electricity; are a prototype for the generation of electricity and hydrogen with limited emissions; are for research in connection with related technologies; and that include a research or teaching component involving one or more postsecondary educational institutions or faculty members of such institution. Any revenue bonds issued by the Kansas Development Finance Authority are to be payable from revenues arising from the generation of electricity or from other revenues available to be pledged by the Authority.

Law Enforcement/Emergency Radio System

HB 2756 would authorize the Department of Transportation to purchase for lease to public safety, governmental, and non-governmental entities, communications equipment, including access to radio communication towers. The Secretary of Transportation would be authorized to establish lease prices for the program. Lease prices established for governmental entities would have to be set so that the Department could recover actual, incremental costs of administration, equipment, installation, and maintenance for each lessee. In the case of non-governmental entities, any lease prices would have to be set at prevailing rates in order to minimize competition with private business. The Secretary of Transportation would be authorized to adopt rules and regulations to implement the Act. The bill would create the Communication System Revolving Fund as the repository for any funds, including bond revenue received under provisions of the Act, available for purposes eligible for financing from the fund. Subject to appropriation acts, expenditures from the fund could be made for equipment, maintenance and administration of the communication system, financing costs, and administrative costs. Finally, the bill would authorize the Kansas Development Finance Authority to issue bonds to finance the communication system created by the act.

Propane Safety and Licensing Act

Sub. for SB 335 enacts the Kansas Propane Safety and Licensing Act and gives the State Fire Marshal authority to establish programs relating to the regulation and licensing of the liquefied petroleum gas (LPG) industry in the state. The State Fire Marshal will be required to establish rules and regulations consistent with the bill. Among other things, the rules and regulations will establish classes of licenses to be renewed annually. These classes are to include, but not be limited to:

- Class one dealer license where one is engaged in the retail distribution of liquefied petroleum gas;
- Class two bulk storage site license which would require the holder to report all bulk storage facilities and locations;
- Class three cylinder transport license where one operates a cylinder delivery service;
- Class four cylinder filling license where one operates a cylinder filling facility;
- Class five recreation vehicle fueling permit for those fueling recreation vehicles or mobile fuel containers;
- Class six cylinder exchange cabinet license where one exchanges cylinders or participates in a cylinder program;
- Class seven self-serve LPG dispensing license is required to operate a LPG fueling facility; and
- Class eight installation and service of LPG gas systems license is required to install, maintain, or modify a residential or commercial LPG distribution and utilization system.

In addition, the State Fire Marshal has the authority to charge and collect fees. The fees will be collected annually as follows:

- Class one—not to exceed \$250 per location;
- Class two—not to exceed \$50 per tank;
- Class three—not to exceed \$125 per truck;
- Class four—not to exceed \$75 per location;
- Class five—not to exceed \$75 per location;
- Class six—not to exceed \$15 per location;
- Class seven—not to exceed \$75 per location; and
- Class eight—not to exceed \$25 per individual.

In addition, the State Fire Marshal will establish education requirements for each class of license and establish inspection programs and requirements for all LPG facilities, operations, installations, and businesses. Further, the bill makes it unlawful to engage in any activity relating to the retail distribution of LPG including the manufacturing, assembling, modifying, fabrication, installing, or selling of any system, container or apparatus used for the transportation, storing, dispensing, or utilization of LPG by an end retail user without first having obtained the proper license. The bill does not apply to vehicles or machinery using LPG, the filling of cylinders by owners for private use, LPG systems with a capacity of less than 20 gallons of LPG, or storage containers with a water capacity of 100 pounds or less.

The bill also requires that a plan and application for design, construction, major modification, and

installation of a LPG facility with an aggregate water capacity exceeding 2,000 gallons be submitted to the State Fire Marshal for review and approval. The State Fire Marshal will have 20 business days to approve the applications and plans unless additional documentation is needed and then an additional 20 business days will be granted to the agency to review and approve the plans.

Also, the bill establishes a nine-member Liquefied Petroleum Gas Advisory Board to be appointed by the Governor. Four of the members will represent retail marketers of LPG; one member will represent the insurance industry; one member will represent wholesalers, resellers, suppliers, and importers of LPG; one member will represent manufacturers and distributors of LPG equipment and transporters; and two members will come from the public. Terms will be for four years. The Board will review rules and regulations concerning LPG. Members of the Board will not receive compensation. The bill also creates the State Fire Marshal Liquefied Petroleum Gas Fee Fund where the fees under the bill will be credited. In addition, the bill provides that in any action brought against a LPG marketer for personal injury or property damage, an end retail user's damages will be reduced by the comparative negligence of the customer or any third party to the extent the action of the customer or the third party contributed to cause the personal injury or property damage, including but not limited to the end retail user's or third party's modification, repair, service, or alteration of the LPG system, or failure to conduct a leak check or inspection of the LPG system after any modification, repair, service, or alteration of the system. Nothing in the bill is intended to limit any claim or defense that an act of an end user, third party, marketer, or other person or entity contributed to cause the personal injury or property damage. In any action, the bill provides that evidence of the marketer's compliance or noncompliance with the provisions of the bill will be admissible as evidence to support a claim or defense to the extent the evidence is relevant to the cause of the injury or damage. The bill provides that there is no intent to limit the liability of any individual, licensee, or LPG marketer for any damages that arise from any reckless or intentional act. Another provision of the bill requires that every LPG marketer maintain continuous general liability coverage of not less than \$1,000,000 and provide proof annually to the State Fire Marshal that the liability insurance exists. The bill also establishes fines for any person who violates the provisions of the bill or the rules and regulations adopted pursuant to the bill. The amount of the fine would be not less than \$50 nor more than \$1,000 for each violation. Every day constitutes a separate violation. These moneys will be deposited in the State General Fund.