

HOUSE BILL No. 2636

By Committee on Utilities
(By request of Select Joint Committee on Energy)

1-18

10 AN ACT concerning the creation of certain cooperatives; providing for
11 generation and purchase of renewable energy; authorizing certain sales
12 of such energy.
13

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

15 Section 1. (a) This act may be cited as the educational entity and
16 municipal renewable energy cooperative act.

17 (b) Subject to the provisions of this act, any educational entity or city,
18 or any two or more educational entities or cities, or both, may create a
19 cooperative for the purpose of generation of renewable energy or pur-
20 chase of renewable energy, or both, for use by such educational entities
21 and cities and by users of electricity located within a participating city.

22 Sec. 2. As used in this act:

23 (a) "Agreement" means the written agreement between or among
24 two or more educational entities or cities, or both, establishing a coop-
25 erative pursuant to this act.

26 (b) "Cooperative" means a cooperative created pursuant to this act
27 by any educational entity or city, or by agreement between any two or
28 more educational entities or cities, or both, to exercise any of the powers
29 granted by this act, including the purchase of renewable energy and the
30 acquisition, construction, reconstruction, operation, repair, extension or
31 improvement of facilities for generation of renewable energy or the ac-
32 quisition of any interest therein or any right to part or all of the capacity
33 thereof.

34 (c) "Educational entity" means any public school district, accredited
35 private school, area vocational school, area vocational-technical school,
36 technical college, community college or public or private university.

37 (d) "Person" means a natural person, a public agency, private cor-
38 poration, firm, partnership, cooperative association or business trust of
39 any nature whatsoever, organized and existing under the laws of any state
40 or of the United States.

41 (e) "Renewable energy" means electricity generated from wind, so-
42 lar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incin-
43 eration and landfill gas resources or technologies.

1 Sec. 3. (a) Whenever the governing body of an educational entity or
2 city proposes to create a cooperative, a majority of the members of such
3 governing body shall adopt a resolution providing for the creation of such
4 cooperative.

5 (b) Whenever the governing bodies of two or more educational en-
6 tities or cities, or both, propose to create a cooperative, a majority of the
7 members of each such governing body shall adopt a resolution providing
8 for the creation of such cooperative.

9 (c) Any resolution provided for by this section shall state the purpose
10 for the creation of a cooperative, shall state that bonds and other indebt-
11 edness may be incurred by such cooperative to be paid from revenues of
12 the cooperative and shall state that the educational entity or city is au-
13 thorized for a period not exceeding 40 years to purchase renewable en-
14 ergy from such cooperative. Such resolution shall be published in a news-
15 paper having general circulation in the counties where the educational
16 entity or city is located and shall be effective 60 days after such
17 publication.

18 Sec. 4. (a) (1) When the resolution of the governing body of a single
19 educational entity or city providing for creation of a cooperative becomes
20 effective, the governing body of the educational entity or city shall ap-
21 prove a resolution creating the cooperative, as provided in subsection (b).

22 (2) When the resolutions of the governing bodies of two or more
23 educational entities or cities, or both, providing for creation of the co-
24 operative becomes effective, each such educational entity or city shall
25 become a member of the cooperative, with all the rights, powers and
26 duties pertaining thereto, by executing an agreement creating the coop-
27 erative, as provided in subsection (b). The agreement shall be approved
28 by a majority of the members of the governing body of each such edu-
29 cational entity or city, or both, and shall be executed by the chief admin-
30 istrative officer of the educational entity and mayor of each such city.

31 (b) The resolution or agreement creating the cooperative shall in-
32 clude the following:

33 (1) The name of the cooperative, which shall include the words
34 “cooperative”;

35 (2) the duration of the cooperative, which may be perpetual;

36 (3) the name of each educational entity or city proposing to be a
37 member of the cooperative;

38 (4) the address of the cooperative’s registered office and the name of
39 the resident agent in charge of such office, except that where the city
40 clerk of a member city is to be the resident agent the name of such city
41 clerk need not be specified in the agreement;

42 (5) the manner in which bylaws of the cooperative may be adopted;

43 (6) the number of directors to serve on the board of directors and

- 1 the method of selecting such directors;
- 2 (7) a statement that neither any educational entity nor any city which
3 is a participant in the cooperative is liable for the obligations of the
4 cooperative;
- 5 (8) any limitation or restriction on the power of the cooperative not
6 specified in this act;
- 7 (9) any other provision relating to the organization or operation of
8 the cooperative deemed appropriate and which is not inconsistent with
9 this act or the laws of this state; and
- 10 (10) such other matters as provided by this act.
- 11 (c) Before a cooperative commences business, the resolution or
12 agreement is filed with the secretary of state and the state corporation
13 commission. A copy thereof, certified by the secretary of state, shall be
14 filed in the office of the register of deeds of each county in which any
15 participating educational entity or city is located. Upon filing of such
16 certified copy of the agreement with the register of deeds of each such
17 county, the cooperative so created shall thereupon be a quasi-municipal
18 corporation.
- 19 Sec. 5. The resolution or agreement creating the cooperative may be
20 amended as the board of directors deems necessary. Any such amend-
21 ment shall be approved by resolution of the governing body of each par-
22 ticipating educational entity or city and shall be executed by the chief
23 administrative officer of each such educational entity and the mayor of
24 each such city.
- 25 Sec. 6. A cooperative shall be governed by a board of directors as
26 provided for in the resolution or agreement creating the cooperative. The
27 board of directors shall be organized, governed, compensated and reim-
28 bursed expenses in accordance with bylaws adopted by the board.
- 29 Sec. 7. (a) A cooperative may exercise the following powers:
- 30 (a) To sue and be sued;
- 31 (b) to have a seal and alter the same at will;
- 32 (c) to adopt, amend and repeal bylaws consistent with the provisions
33 of this act and the resolution or agreement creating the cooperative;
- 34 (d) to generate and purchase renewable energy and sell such energy
35 to the educational entities and cities participating in the cooperative and
36 the users of electricity located within cities participating in the
37 cooperative;
- 38 (e) to make and enter into any other contract or agreement necessary
39 or incidental to the performance of its duties and the execution of its
40 powers under this act, including contracts for the purchase and sale of
41 renewable energy, subject to the limitations and restrictions of this act;
- 42 (f) as provided by section 9, and amendments thereto, to assume and
43 incur indebtedness and to enter into contracts with the Kansas develop-

1 ment finance authority, which is authorized to borrow money, issue bonds
2 and provide financing for the construction, upgrading or repair of renew-
3 able energy generation facilities of the cooperative upon such terms and
4 conditions as required by the authority and such bonds shall be payable
5 from and be secured by the pledge of revenues derived from the opera-
6 tion of such renewable energy generation facilities;

7 (g) to establish, revise and collect rates or charges for renewable en-
8 ergy sold, furnished or supplied by the cooperative;

9 (h) to acquire, hold, lease to and from and dispose of real or personal
10 property necessary for the performance of its duties and the execution of
11 its powers under this act; and

12 (i) to exercise all other powers not inconsistent with the constitution
13 of the state of Kansas or the United States constitution, which powers
14 may be reasonably necessary or appropriate for or incidental to the ef-
15 fectuation of its authorized purposes or to the exercise of any of the
16 powers enumerated in this section, and generally may exercise in con-
17 nection with its property and affairs, and in connection with property
18 within its control, any and all powers which might be exercised by a nat-
19 ural person or a private corporation in connection with similar property
20 and affairs.

21 Sec. 8. (a) A cooperative shall generate and purchase renewable en-
22 ergy only in such amounts as are reasonably necessary to serve the con-
23 sumptive needs of the educational entities and cities participating in the
24 cooperative and the users of electricity located within cities participating
25 in the cooperative.

26 (b) The retail electric supplier shall be required to purchase any sur-
27 plus renewable energy generated or purchased by a cooperative at whole-
28 sale market prices or shall make a good faith effort to sell the surplus.
29 The purchase of such renewable energy shall not be construed to be a
30 breach of an existing full service power supply contract.

31 Sec. 9. (a) A cooperative may enter into agreements with the Kansas
32 development finance authority to issue revenue bonds or provide other
33 financing pursuant to the Kansas development finance authority act,
34 K.S.A. 74-8901 et seq., and amendments thereto, and to provide for pay-
35 ment of the bonds for the purpose of financing the construction, upgrad-
36 ing or repair of renewable energy generation facilities owned by the
37 cooperative.

38 (b) The Kansas development finance authority may pledge the agree-
39 ment or agreements authorized in this section for the payment or re-
40 demption of the bonds. The activities of a cooperative in administering
41 and performing the powers, duties and functions prescribed by the pro-
42 visions of this act from the proceeds of bonds issued for such purpose by
43 the Kansas development finance authority are hereby approved for the

1 purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto,
2 and the authorization of the issuance of such bonds by the Kansas de-
3 velopment finance authority in accordance with that statute. No bonds
4 shall be issued pursuant to this section unless the Kansas development
5 finance authority has received a resolution of the board of the cooperative
6 requesting the issuance of such bonds. The provisions of subsection (a)
7 of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issu-
8 ance of bonds for such purposes when so authorized and any such issu-
9 ance of bonds is exempt from the provisions of subsection (a) of K.S.A.
10 74-8905, and amendments thereto. Bonds issued pursuant to this section
11 shall not be subject to the notice requirements of K.S.A. 74-8905, and
12 amendments thereto.

13 Sec. 10. Any educational entity or city may become a member of a
14 cooperative or withdraw as a member if membership or withdrawal is
15 authorized by resolution of the governing body of the educational entity
16 or city and consented to by resolution of the board of directors of the
17 cooperative. The governing body of the educational entity or city and the
18 board of directors of the cooperative also shall approve by adoption of a
19 resolution, and execute, an agreement creating a cooperative or an
20 amendment to the existing agreement creating the cooperative, adding
21 the member educational entity or city to the agreement or withdrawing
22 the member educational entity or city. Any other amendment to the res-
23 olution or agreement creating the cooperative shall be governed by the
24 provisions of section 5, and amendments thereto.

25 Sec. 11. Any educational entity or city participating in a cooperative
26 may enter into a contract with such cooperative for a period not exceeding
27 40 years providing for the purchase of renewable energy from such
28 cooperative.

29 Sec. 12. A cooperative shall not be subject to the jurisdiction, regu-
30 lation, supervision and control of the state corporation commission.

31 Sec. 13. This act shall take effect and be in force from and after its
32 publication in the statute book.