

HOUSE BILL No. 2182

By Committee on Energy and Utilities

1-30

9 AN ACT concerning the department of health and environment; requir-
10 ing the Kansas air quality act be consistent and uniform with the fed-
11 eral clean air act; amending K.S.A. 19-101a, 65-3012 and K.S.A. 2008
12 Supp. 65-3005 and 65-3008a and repealing the existing sections.
13

14 WHEREAS, The federal government is currently contemplating the
15 regulation of certain emissions from stationary, mobile and area sources
16 not currently regulated by the United States environmental protection
17 agency, the form and requirements of which cannot be predicted at this
18 time, but which could include cap and trade regulations, national energy
19 taxes or a specific tax on one or more of such emissions that would pre-
20 empt state-specific programs intended to reduce the emission of green-
21 house gases and other emissions; and

22 WHEREAS, Any uncoordinated state regulatory initiative intended to
23 regulate such emissions may be inconsistent with subsequent congress-
24 sional determinations and with related federal legislation; and

25 WHEREAS, An individual Kansas response to the development of
26 new regulatory programs intended to regulate emissions not currently
27 regulated by the federal government is premature: Now, therefore,
28

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

30 Section 1. K.S.A. 19-101a is hereby amended to read as follows: 19-
31 101a. (a) The board of county commissioners may transact all county
32 business and perform all powers of local legislation and administration it
33 deems appropriate, subject only to the following limitations, restrictions
34 or prohibitions:

35 (1) Counties shall be subject to all acts of the legislature which apply
36 uniformly to all counties.

37 (2) Counties may not affect the courts located therein.

38 (3) Counties shall be subject to acts of the legislature prescribing
39 limits of indebtedness.

40 (4) In the exercise of powers of local legislation and administration
41 authorized under provisions of this section, the home rule power con-
42 ferred on cities to determine their local affairs and government shall not
43 be superseded or impaired without the consent of the governing body of

1 each city within a county which may be affected.

2 (5) Counties may not legislate on social welfare administered under
3 state law enacted pursuant to or in conformity with public law No. 271—
4 74th congress, or amendments thereof.

5 (6) Counties shall be subject to all acts of the legislature concerning
6 elections, election commissioners and officers and their duties as such
7 officers and the election of county officers.

8 (7) Counties shall be subject to the limitations and prohibitions im-
9 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
10 prescribing limitations upon the levy of retailers' sales taxes by counties.

11 (8) Counties may not exempt from or effect changes in statutes made
12 nonuniform in application solely by reason of authorizing exceptions for
13 counties having adopted a charter for county government.

14 (9) No county may levy ad valorem taxes under the authority of this
15 section upon real property located within any redevelopment project area
16 established under the authority of K.S.A. 12-1772, and amendments
17 thereto, unless the resolution authorizing the same specifically authorized
18 a portion of the proceeds of such levy to be used to pay the principal of
19 and interest upon bonds issued by a city under the authority of K.S.A.
20 12-1774, and amendments thereto.

21 (10) Counties shall have no power under this section to exempt from
22 any statute authorizing or requiring the levy of taxes and providing sub-
23 stitute and additional provisions on the same subject, unless the resolution
24 authorizing the same specifically provides for a portion of the proceeds
25 of such levy to be used to pay a portion of the principal and interest on
26 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
27 ments thereto.

28 (11) Counties may not exempt from or effect changes in the provi-
29 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

30 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101
31 through 12-1,109, and amendments thereto, counties may not levy and
32 collect taxes on incomes from whatever source derived.

33 (13) Counties may not exempt from or effect changes in K.S.A. 19-
34 430, and amendments thereto.

35 (14) Counties may not exempt from or effect changes in K.S.A. 19-
36 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

37 (15) Counties may not exempt from or effect changes in K.S.A. 19-
38 15,139, 19-15,140 and 19-15,141, and amendments thereto.

39 (16) Counties may not exempt from or effect changes in the provi-
40 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
41 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
42 through 12-1270 and 12-1276, and amendments thereto.

43 (17) Counties may not exempt from or effect changes in the provi-

- 1 sions of K.S.A. 19-211, and amendments thereto.
- 2 (18) Counties may not exempt from or effect changes in the provi-
3 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- 4 (19) Counties may not regulate the production or drilling of any oil
5 or gas well in any manner which would result in the duplication of reg-
6 ulation by the state corporation commission and the Kansas department
7 of health and environment pursuant to chapter 55 and chapter 65 of the
8 Kansas Statutes Annotated, and amendments thereto, and any rules and
9 regulations adopted pursuant thereto. Counties may not require any li-
10 cense or permit for the drilling or production of oil and gas wells. Counties
11 may not impose any fee or charge for the drilling or production of any
12 oil or gas well.
- 13 (20) Counties may not exempt from or effect changes in K.S.A. 79-
14 41a04, and amendments thereto.
- 15 (21) Counties may not exempt from or effect changes in K.S.A. 79-
16 1611, and amendments thereto.
- 17 (22) Counties may not exempt from or effect changes in K.S.A. 79-
18 1494, and amendments thereto.
- 19 (23) Counties may not exempt from or effect changes in subsection
20 (b) of K.S.A. 19-202, and amendments thereto.
- 21 (24) Counties may not exempt from or effect changes in subsection
22 (b) of K.S.A. 19-204, and amendments thereto.
- 23 (25) Counties may not levy or impose an excise, severance or any
24 other tax in the nature of an excise tax upon the physical severance and
25 production of any mineral or other material from the earth or water.
- 26 (26) Counties may not exempt from or effect changes in K.S.A. 79-
27 2017 or 79-2101, and amendments thereto.
- 28 (27) Counties may not exempt from or effect changes in K.S.A. 2-
29 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
30 1,178 through 65-1,199, 65-3001 through 65-3028, and amendments
31 thereto.
- 32 (28) Counties may not exempt from or effect changes in K.S.A. 2007
33 Supp. 80-121, and amendments thereto.
- 34 (29) Counties may not exempt from or effect changes in K.S.A. 19-
35 228, and amendments thereto.
- 36 (30) Counties may not exempt from or effect changes in the wireless
37 enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of
38 K.S.A. 12-5301 through 12-5308, and amendments thereto.
- 39 (31) Counties may not exempt from or effect changes in K.S.A. 2007
40 Supp. 26-601, and amendments thereto.
- 41 (32) (A) Counties may not exempt from or effect changes in the Kan-
42 sas liquor control act except as provided by paragraph (B).
- 43 (B) Counties may adopt resolutions which are not in conflict with the

1 Kansas liquor control act.

2 (33) (A) Counties may not exempt from or effect changes in the Kan-
3 sas cereal malt beverage act except as provided by paragraph (B).

4 (B) Counties may adopt resolutions which are not in conflict with the
5 Kansas cereal malt beverage act.

6 (34) Counties may not exempt from or effect changes in the Kansas
7 lottery act.

8 (35) Counties may not exempt from or effect changes in the Kansas
9 expanded lottery act.

10 (b) Counties shall apply the powers of local legislation granted in
11 subsection (a) by resolution of the board of county commissioners. If no
12 statutory authority exists for such local legislation other than that set forth
13 in subsection (a) and the local legislation proposed under the authority
14 of such subsection is not contrary to any act of the legislature, such local
15 legislation shall become effective upon passage of a resolution of the
16 board and publication in the official county newspaper. If the legislation
17 proposed by the board under authority of subsection (a) is contrary to an
18 act of the legislature which is applicable to the particular county but not
19 uniformly applicable to all counties, such legislation shall become effec-
20 tive by passage of a charter resolution in the manner provided in K.S.A.
21 19-101b, and amendments thereto.

22 (c) Any resolution adopted by a county which conflicts with the re-
23 strictions in subsection (a) is null and void.

24 Sec. 2. K.S.A. 2008 Supp. 65-3005 is hereby amended to read as
25 follows: 65-3005. (a) The secretary shall have the power to:

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

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

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

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

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

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

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

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

1 by 42 U.S.C. 7491.

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

6 (b) *It is a policy of the state to regulate the air quality of the state*
7 *and implement laws and regulations that are applied equally and uni-*
8 *formly throughout the state and consistent with those of the federal*
9 *government.*

10 (1) *The secretary shall have the authority to promulgate rules and*
11 *regulations to establish standards to ensure that the state is in compliance*
12 *with the provisions of the federal clean air act, as amended (42 U.S.C.*
13 *Section 7401 et seq.). The standards so established shall not be any more*
14 *stringent, restrictive or expansive than those required under the federal*
15 *clean air act, as amended, nor shall the rules and regulations be enforced*
16 *in any area of the state prior to the time required by the federal clean air*
17 *act. The restrictions of this section shall not apply to the parts of the state*
18 *implementation plan developed by the secretary to bring a nonattainment*
19 *area into compliance when needed to have a United States environmental*
20 *protection agency approved state implementation plan.*

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

24 (c) *Any action by the secretary on any application filed after January*
25 *1, 2006, and before the effective date of this act, which seeks the issuance,*
26 *modification, amendment, revision or renewal of any approval or permit,*
27 *and which is still the subject of any administrative or judicial review*
28 *proceedings, shall be reconsidered by the secretary upon the applicant's*
29 *or permittee's timely written request, which shall be filed no later than*
30 *60 days after the effective date of this act. Within 15 days after the ap-*
31 *plicant or permittee files a written request pursuant hereto, the secretary*
32 *shall reconsider the secretary's decision, agency action or order and shall*
33 *determine in accordance with the provisions of this act, as amended,*
34 *whether the issuance, modification, amendment, revision or renewal of*
35 *any approval or permit requested by the applicant or permittee should*
36 *be issued, modified, amended, revised or renewed. If the applicant or*
37 *permittee is aggrieved by the secretary's determination hereunder, the*
38 *applicant or permittee shall be immediately entitled to judicial review of*
39 *such agency action by filing a petition for judicial review in the court of*
40 *appeals within 30 days from the date of the secretary's determination. If*
41 *the secretary fails to act within the 15 days, the applicant or permittee*
42 *immediately shall be entitled to seek a writ of mandamus compelling the*
43 *secretary to act by filing for such writ in the court of appeals. Such pro-*

1 *ceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and*
2 *amendments thereto, however the applicant or permittee shall not be re-*
3 *quired to exhaust any other or additional administrative remedies avail-*
4 *able within the agency notwithstanding any other provision of law.*

5 Sec. 3. K.S.A. 2008 Supp. 65-3008a is hereby amended to read as
6 follows: 65-3008a. (a) No permit shall be issued, modified, renewed or
7 reopened without first providing the public an opportunity to comment
8 and request a public hearing on the proposed permit action. The request
9 for a public hearing on the issuance of a permit shall set forth the basis
10 for the request and a public hearing shall be held if, in the judgment of
11 the secretary, there is sufficient reason.

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

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

38 Sec. 4. K.S.A. 65-3012 is hereby amended to read as follows: 65-
39 3012. (a) ~~Notwithstanding any other provision of this act, the secretary~~
40 ~~may take such action as may be necessary to protect the health of persons~~
41 ~~or the environment. (1) Upon receipt of information that the emission of~~
42 ~~an air pollution source or combination of air pollution sources presents a~~
43 ~~an imminent and substantial endangerment to the public health of per-~~

1 ~~sons or welfare~~ or to the environment; ~~or (2) for an imminent or actual~~
2 ~~violation of this act, any rules and regulations adopted under this act, any~~
3 ~~orders issued under this act or any permit conditions required by this act.~~
4 ~~—(b)— The action the secretary may take under subsection (a) includes~~
5 ~~but is not limited to:~~
6 ~~—(1)— Issuing an order directing the owner or operator, or both, to take~~
7 ~~such steps as necessary to prevent the act or eliminate the practice. Such~~
8 ~~order may include, with respect to a facility or site, temporary cessation~~
9 ~~of operation.~~
10 ~~—(2)— Commencing, the secretary may commence an action in the dis-~~
11 ~~trict court to enjoin acts or practices specified in subsection (a) or re-~~
12 ~~questing request the attorney general or appropriate county or district~~
13 ~~attorney to commence an action to enjoin those acts or practices.~~
14 (b) Upon a showing by the secretary that a person has engaged in
15 those acts or practices, a permanent or temporary injunction, restraining
16 order or other order may be granted by any court of competent jurisdic-
17 tion. An action for injunction under this subsection shall have precedence
18 over other cases in respect to order of trial.
19 ~~—(3)— Applying to the district court in the county in which an order of~~
20 ~~the secretary under subsection (b)(1) will take effect, in whole or in part,~~
21 ~~for an order of that court directing compliance with the order of the~~
22 ~~secretary. Failure to obey the court order shall be punishable as contempt~~
23 ~~of the court issuing the order. The application under this subsection for~~
24 ~~a court order shall have precedence over other cases in respect to order~~
25 ~~of trial.~~
26 ~~—(c)— In any civil action brought pursuant to this section in which a~~
27 ~~temporary restraining order or preliminary injunction is sought, it shall~~
28 ~~not be necessary to allege or prove at any stage of the proceeding that~~
29 ~~irreparable damage will occur should the temporary restraining order or~~
30 ~~preliminary injunction not be issued or that the remedy at law is inade-~~
31 ~~quate, and the temporary restraining order or preliminary injunction shall~~
32 ~~issue without such allegations and without such proof.~~
33 ~~—(d)— Any order of the secretary pursuant to subsection (b)(1) is subject~~
34 ~~to hearing and review in accordance with the Kansas administrative pro-~~
35 ~~cedure act.~~
36 Sec. 5. K.S.A. 19-101a, 65-3012 and K.S.A. 2008 Supp. 65-3005 and
37 65-3008a are hereby repealed.
38 Sec. 6. This act shall take effect and be in force from and after its
39 publication in the statute book.