

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2412**

As Agreed to May 3, 2008

Brief*

Senate Sub. for HB 2412 would enact the Economic Stimulus Act of 2008. Provisions of the bill would:

IMPACT

- Make changes to administration of the IMPACT program in the Department of Commerce by removing the cap that limits IMPACT awards to 95 percent of the withholding taxes to be generated by the new project. The bill also would require the Secretary of Commerce to develop targets that would designate at least 15 percent of IMPACT money to rural employers and at least 20 percent to small businesses. Small businesses would be defined to be those with 100 or fewer employees. Employers could not be counted as both rural and small businesses under the bill.

Intermodal Transportation Revolving Fund

- Create an Intermodal Transportation Revolving Fund within the Department of Transportation to provide assistance to government units for intermodal transportation projects. In order to be eligible for assistance from the Fund, a governmental unit would have to have an intermodal facility project within its jurisdiction

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with a cost of a minimum of \$150 million. Neither the state nor the governmental unit would be authorized to pledge its full faith and credit to support the bonds issued through the Fund.

Corporation Income Tax

- A corporation income tax apportionment provision would extend by five years (from December 31, 2009 to December 31, 2014) the deadline for certain manufacturers to become eligible for a single-factor corporation income tax apportionment formula by constructing a new facility in Kansas that costs at least \$100 million; employing at least 100 new employees; and paying higher than average wages.

Energy Production and Energy Efficiency

- Establish maximum nitrogen oxides and sulfur dioxide emissions levels for the proposed Sunflower power plant expansion near Holcomb. Those maximum levels would be 0.050 lbs. nitrogen oxides/mmBtu, and 0.065 lbs. sulfur dioxide /mmBtu for low-sulfur coal or 0.085 lbs. sulfur dioxide/mmBtu for high-sulfur coal.

Under the bill, low-sulfur coal would be defined as having a scrubber inlet emission rate of less than 0.9 lbs./mmBtu. High-sulfur coal would be defined as having a scrubber inlet emission rate of 0.9 lbs./mmBtu or greater.

- Require investor-owned and cooperative electric utilities to develop retail tariffs for electricity generated from wind, develop energy efficiency and load management programs, and develop and implement assistance programs for inventorying, assessing, and developing means of reducing greenhouse gas emissions.
- Require Sunflower to request that the Southwest Power Pool (SPP) determine whether transmission line upgrades

are necessary to deliver electricity from its plant to municipal or cooperative utilities.

- Establish energy efficiency standards for state buildings and equipment. New, and to the extent possible renovated, state buildings would have to be designed to exceed by 10 percent specified national energy efficiency standards as prescribed in rules and regulations adopted by the Secretary of Administration.
- Require new products and equipment such as appliances, light fixtures, and computers purchased by state agencies to be at least as energy efficient as similar products that qualify for the EnergyStar rating. The requirement would apply if projected savings for the useful life of the products and equipment is at least equal to the additional cost of functionally equivalent products and equipment of lower efficiency.
- Require new or extended state leases for real property and state-owned real property to meet energy efficiency standards.
- Enact the Net Metering and Easy Connection Act which would establish a net metering procedure for small solar electricity generating units that are interconnected with a retail electricity supplier. The Act specifically would permit the Kansas Corporation Commission (KCC) to approve net metering tariffs for other methods of renewable generation if requested to do so by an electric utility.

Electric generation equipment covered by the act includes interconnected solar-powered units with maximum capacity of 100 kilowatts located on premises controlled by the customer, and used to offset all or part of the customer's electricity needs.

- Provide tax incentives for energy efficiency improvements in multi-family residential rental property. Tax credits would be created for the following improvements:
 - \$100 per dwelling unit located immediately below the attic for installation of sufficient ceiling insulation to achieve an insulation value of R-52;
 - \$300 per dwelling unit served by a replacement heating and air conditioning system for multi-family residences, if the new system meets the energy efficiency standards established by the bill, and if there are separate temperature controls in each unit.

- Establish a 15-member Kansas Electric Generation Science and Technology Commission composed of legislators and appointees of the Governor and legislative leadership. Members appointed by the Governor and legislative leaders would have to possess expertise in greenhouse gas regulation or practices or climatology, energy conservation, baseload generation and regulation, or renewable energy resources. The Commission would study a range of issues related to generation and distribution of electricity. The Commission would make a preliminary report to the House and Senate Utilities committees by the beginning of 2009 Legislative Session and before the first day of the 2010 and 2011 Sessions. The Commission's final report would be submitted by the start of the 2012 Session. Authorization for the Commission would sunset on December 31, 2011.

- Create a renewable resources requirement for electric utilities. The bill would require that for most electric utilities, by 2012, at least 10 percent of the three-year average peak load of electric public utilities and electric cooperative utilities be from renewable resources. The required amount of renewable resources would increase to 15 percent by 2016 and to 20 percent by 2020. Renewable energy provided to a utility under the Net

Metering and Easy Connection Act and the parallel generation statute would be counted toward the utility's renewable resource requirement. The KCC would be required to adopt rules and regulations to implement the renewable resources requirements. An accelerated renewable resource standard would be established for Sunflower – moving the requirements for each increment up 4 years: 10 percent of its three-year average peak load from renewable resources in 2008; 15 percent by 2012; and 20 percent by 2016.

Renewable resources for this requirement would include wind, solar, photovoltaic, biomass, hydropower, geothermal, and landfill gases.

- Require certain new electric generation facilities to utilize carbon dioxide capture or reduction technologies. After establishment of rules and regulations regarding emission of carbon dioxide, owners or operators of certain coal-fired electric generation facilities would be required to implement carbon dioxide capture or reduction practices using the best available control technologies. The issuance of an air permit could not be delayed or deferred pending adoption of rules and regulations regarding carbon dioxide. Facilities subject to the requirement would be coal-fired, steam electricity generating units, of more than 250 million BTUs per hour heat input, operation of which began after January 1, 2008. Facilities owned by the federal government or facilities on tribal lands would not be subject to the requirement.
- Amend existing law regarding regulation of air quality and certain utilities. The bill would amend the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations, issuing orders, or taking actions under the Kansas Act, or other state law, that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act. The Secretary could adopt rules and regulations under the Kansas Act that are more

stringent than required by the federal act only if authorized by law. The restriction in the bill would not apply to actions necessary to prevent designation by the federal Environment Protection Agency of a non-attainment area or to an implementation plan for a non-attainment area under the Clean Air Act. The provision would authorize the Secretary to enter into agreements with permittees that are more stringent, restrictive, or expansive than federal requirements. The bill also would require that the Kansas Department of Health and Environment (KDHE) propose and submit to the Legislature by January 12, 2009 carbon dioxide air emission requirements. The bill would restore, on January 10, 2011, the authority of the Secretary of Health and Environment to promulgate rules and regulations under the Kansas Air Quality Act that are more stringent, restrictive or expansive than required by the Federal Clean Air Act.

The Secretary would be prohibited from denying or delaying issuance of a permit under the Act if the requirements of the Act have been met by the applicant. The Secretary also would be prohibited from utilizing emergency powers under KSA 65-3012, or other discretionary authority, in the air quality permitting process. KSA 65-3012 would be amended to specify that authority provided by that statute could be used by the Secretary only to take action against an existing source of air pollution that poses an imminent and substantial threat to human health or the environment.

If requested by the applicant, the Secretary would be required to reconsider an application for a permit filed after January 1, 2006 and prior to the effective date of the Act that remains pending in any administrative or judicial review proceeding. The application for reconsideration would have to be filed with the Secretary within 60 days of the effective date of the Act, and the Secretary would have 15 days during which to act on the request.

An applicant aggrieved by the Secretary's action would be able to file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's determination. The Court's review would be conducted in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions without the need to exhaust other administrative remedies.

Existing law would be amended to require the Secretary to issue, amend, revise or renew an operating permit, in compliance with provisions of the bill and the Federal Clean Air Act, if the administrator of the US Environmental Protection Agency does not object in writing within 45 days of receipt of the proposed permit.

Existing law would be amended to permit members of large electric cooperatives to elect to be exempt from regulation by the KCC utilizing the procedure currently available only to cooperatives with fewer than 15,000 customers.

Finally, the bill would amend current law to require the KCC to allow requesting utilities to capitalize and add to their rate base investments in and expenditures for energy efficiency, conservation, and demand management programs. Any such programs would have to be approved by the KCC.

- Require the Secretary of Health and Environment to adopt rules and regulations requiring certain coal-fired electricity generating units to reduce their mercury emissions by at least 80 percent. Generating units that would be affected by the provision are those that began operation after January 1, 2008, and that use coal to produce over 10 percent of their heat input.
- Require the KCC and KDHE annually to identify large coal-fired electricity generating facilities in Kansas with carbon dioxide emissions in excess of 110 percent of the statewide average for large plants. In addition, Sunflower

would be required to become a member of The Climate Registry, prepare a carbon dioxide gas emissions inventory using the protocols developed by The Climate Registry, and submit a report of its inventory to the Legislature no later than December 1, 2008.

- Require Sunflower to offer the Kansas City Kansas Board of Public Utilities (BPU) a first option to purchase up to 200 MW of the plant, an equivalent amount of power not currently allocated to Kansas customers from the proposed expansion units, or a combination of the two. Kansas electric cooperatives and Kansas municipal electric utilities would have a secondary option for any amount not purchased by BPU.
- Require Sunflower to develop and implement by 2010, an enhanced energy efficiency and load management program which would provide information, technical assistance, and incentives to reduce total power generation requirements. The company would be required to consider utilizing the energy efficiency financing program established in current law as well as other energy education and conservation promotion programs that are consistent with goals developed by the KCC.
- Require the schools of engineering at any Regents' institution, upon a request from the Kansas Electric Generation Science and Technology Commission, Kansas Energy Council, Kansas Bioscience Authority, KCC, or KDHE, to evaluate innovative renewable or distributed electricity generation or transmission technologies patented by Kansans and report on the technological feasibility to the requesting entity. If the project is determined to be feasible, the requesting entity would be required to refer the project to the Kansas Technology Enterprise Corporation and Kansas Department of Commerce for possible commercial development. At the start of each regular Legislative Session the engineering schools would be required to report their activities

pursuant to this provision to the standing committees on energy and utilities.

- Establish a Weatherization Assistance Program Account in the Housing Trust Fund as the repository for moneys from electric utilities. The Account would be used to finance grants under the Weatherization Assistance Program to increase energy efficiency of housing. Any unencumbered balance in the Weatherization Assistance Program Account in excess of \$3 million would go to the Housing Energy Efficiency Loan Fund.
- Authorize the KCC to approve recovery in electricity rates an amount equal to two times the amount that a utility chooses to pay into the Weatherization Assistance Program Account. The amount that a utility could pay into that Fund could not exceed 5 percent of the utility's uncollectible customer bills.
- Require each retail electric utility, between January 1, 2009 and January 1, 2013 to pay \$0.02 per month for each retail meter served by the supplier. Funds would be used to finance the Weatherization Assistance Program.

Sales Tax Refunds – Telecommunications Machinery and Equipment

Refunds would be authorized relative to state sales tax paid on the sale of certain telecommunications machinery and equipment equivalent to 20 percent of such amount paid during FY 2012; 40 percent during FY 2013; 60 percent in FY 2014; and 80 percent in FY 2015; and 100 percent in FY 2016 and thereafter. Local sales taxes paid would not be refunded, and taxpayers would have to submit refund claims within one year.

Conference Committee Action

The Conference Committee agreed to the Senate provisions of HB 2412, with a new definition of small business

as having 100 or fewer employees, and further agreed to incorporate into the bill provisions of the following:

- SB 693, as amended by Senate Committee of the Whole, regarding the Intermodal Transportation Revolving fund with an amendment to conform with the contracting procedures routinely used by the Department of Transportation;
- Senate Sub. for HB 2037, as recommended by Senate Committee on Assessment and Taxation, regarding corporate income tax rate and apportionment;
- House Sub. for SB 148, as passed by the Legislature, regarding energy production and energy efficiency;
- Senate Sub. for HB 2802, passed by the Legislature, also regarding energy production and energy efficiency, with a further amendment to delete language that would have created a Systems Benefit Fund supported by a 2¢ per retail electric meter per month charge. The Conference Committee action retained the monthly charge and provided that the revenue be placed in the Weatherization Assistance Program Account; and
- HB 2762 regarding sales tax refunds for telecommunications machinery and equipment beginning in July 2011.

Background

The Senate-passed version of Senate Sub. for HB 2412 included some, but not all, of the provisions originally contained in SB 525. A fiscal note pertinent to the provisions as included in this bill is not available.

Provisions of SB 693, as amended by the Senate Committee of the Whole, creating the Intermodal

Transportation Revolving Fund, were supported at the Senate Commerce Committee hearing on the bill by representatives from the City of Gardner, the Johnson County Economic Development Council, the Gardner Chamber of Commerce, the Allen Group, the Kansas Department of Transportation, the business SmartPort, and the Johnson County Board of County Commissioners. The bill also was supported in writing by the Gardner City Council, the Kansas City Area Development Council, BNSF Railroad, and several Gardner citizens and developers. The bill was opposed by Bryan DeMars, a citizen of Gardner. The bill also was opposed in writing by the Gardner-Edgerton School District and another citizen of Gardner.

The fiscal note provided by the Department of Budget on SB 693 indicates that the Department of Transportation would issue approximately \$41 million in bonds from FY 2009 through FY 2015. Assuming the qualified borrowers are able to meet their loan repayment schedules, there would be no net effect on state revenues.

SB 693 was in the House Committee on Transportation at the time the Conference Committee acted on this bill.

The original version of HB 2037 dealt with various tax incentives for energy efficiency improvements of non-owner occupied housing units. The Senate Assessment and Taxation Committee on March 24, 2008 stripped the bill's original provisions; recommended that a substitute bill be created; and inserted the provisions of SB 686 relating to the corporation income tax apportionment formula for certain manufacturers.

Kansas has traditionally determined the amount of multistate income subject to taxation based on a three-factor formula utilizing sales, property, and payroll. Legislation enacted in 2007 (SB 240) allowed certain manufacturers meeting specific criteria to qualify for a single-factor formula based only on sales in the state. Proponents said that the 2007 legislation was designed to encourage Hill's Pet Nutrition to locate a new facility in Kansas.

During the public hearing on SB 686, proponents, who included the Secretary of Commerce, said that they preferred to not state publicly at this time which additional companies might qualify under the five-year extension.

The provisions of Sen. Sub. for HB 2037 included in this bill are not expected to have a fiscal impact in fiscal years 2009 through 2013.

The House Committee on Energy and Utilities introduced H. Sub. for SB 148 which replaced Senate-passed provisions that would have allowed certain State agencies to become members of KAN-ED. The substitute bill contained provisions regarding electricity production and regulation. The bill was vetoed by the Governor on April 17, 2008. The Senate voted to override the veto on April 30, 2008. The motion in the House to override the Governor's veto failed on May 1, 2008.

Among other things, the House substitute language included all provisions of H. Sub. for SB 327, as passed by the Legislature (with technical and conforming amendments). House Sub. for SB 327 was vetoed by the Governor on March 21, 2008. The Senate voted to override the Governor's veto on April 3, 2008. At the time of the Conference Committee action on Sub. for HB 2412, the House had not taken up a motion to override the veto.

A fiscal note pertinent to the provisions of H. Sub. for SB 148 included in this conference committee report is not available.

Senate Sub. for HB 2802, as passed by the House, would have created the Kansas Performance Measurement Commission, an 11-member body authorized to contract with a private consultant to design a performance measurement management system for the State. Provisions creating the Performance Measurement Commission were included in Sub. for Sub. for SB 316. That bill was signed by the Governor on April 22, 2008. The Senate Committee on Federal and State Affairs substituted some of the energy production and energy

efficiency provisions described above for the language passed by the House. As passed by the Legislature, provisions of Sen. Sub. for HB 2802 would have become effective only if the veto of House Sub. for SB 148 had been overridden.

A fiscal note pertinent to the provisions of S. Sub. for HB 2802 included in this conference committee report is not available.

The fiscal note for the sales tax refund for telecommunications machinery and equipment is estimated to be a reduction of revenue of \$3.3 million in FY 2012 and a reduction of \$6.5 million revenue in FY 2013.

economic stimulus act