

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 148**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 148 would:

- Establish maximum nitrogen oxides and sulfur dioxide emissions levels for the proposed Sunflower power plant expansion near Holcomb; and
- Require investor-owned and cooperative electric utilities to:
 - Develop and submit to the Kansas Corporation Commission (KCC), by July 1, 2009, a retail tariff for electricity generated from wind, under certain circumstances;
 - Develop an energy efficiency and load management program to provide information, technical assistance and incentives to customers; and
 - Develop and implement a program to assist businesses and institutions with inventorying and assessing greenhouse gas emissions and developing means of reducing those emissions.
- Require Sunflower to request that the Southwest Power Pool (SPP) determine whether transmission line upgrades are necessary to deliver electricity that would be purchased from Sunflower by any requesting municipal electric utility or electricity distribution cooperative and the appropriate cost recovery mechanism under SPP tariffs and rules;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Establish energy efficiency standards for state buildings and equipment;
- Enact the Net Metering and Easy Connection Act;
- Provide tax incentives for energy efficiency improvements in residential rental property;
- Establish the Kansas Electric Generation Science and Technology Commission;
- Create a renewable resources requirement for electric utilities;
- Require certain electric generation facilities to utilize carbon dioxide capture or reduction technologies;
- Amend existing law regarding regulation of air quality and certain utilities;
- Enact a provision requiring reduction of mercury emissions from certain electricity generating units; and
- Require the Kansas Corporation Commission (KCC) and the Kansas Department of Health and Environment (KDHE) annually to identify operators of electric utilities with coal-fired generating capacity greater than 350 MW in Kansas with carbon dioxide emissions in excess of 110 percent of the statewide average emissions from coal-fired plants in Kansas with a capacity greater than 350 MW.

Specific provisions of the bill are described below.

The bill would establish for the new Sunflower units, annual emission limits of:

- 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 of 0.9 lbs./mmBtu or greater.

Wind Generated Electricity Tariff

The bill would require that by July 1, 2009, certain electric public utilities develop and submit to the KCC for approval a tariff applicable to the retail purchase of electricity generated from a wind resource. The provision would not apply to municipal utilities. The provision also would not apply to utilities that do not own wind generation capacity and do not purchase wind-generated energy from another entity, and the provision would not apply if a utility's member-owned wholesale provider does not own wind generation. For those utilities to which the provision applies, the wind-powered electricity generating resource could be owned by the utility or owned by another generator from whom the utility purchases the electricity at wholesale.

Energy Efficiency and Load Management

Each electric utility, other than a municipal electric utility, would be required to develop energy efficiency and load management programs that provide information, technical assistance and incentives to each type and class of customer in order to control energy use. In addition, each such utility would be required to submit to the KCC, by July 1, 2010, a report of the elements of the program developed in accordance with the requirement.

Greenhouse Gas Emission Reduction

All electric utilities, except municipal electric utilities, would be required to develop, or work with regional or local organizations to develop, and implement a voluntary conservation program to assist businesses and institutions with inventorying and assessing the emission of greenhouse gases from purchased electricity, heat, or steam. The inventory also would include, if feasible, indirect emissions from activities of the business or institution. Under this provision, utilities also would be required to assist businesses and institutions with developing methods and practices with which to reduce greenhouse gas emissions while considering the economic impact of the methods and practices.

Determination of Need for Transmission Upgrades

When a municipal utility or an electricity distribution cooperative utility requests the purchase of electricity from Sunflower Electric Power Corporation, Sunflower would be required to apply to the SPP for a determination of any transmission line upgrades necessary to deliver the purchased electricity to the purchasing utility. SPP also would determine the appropriate cost recovery mechanism under its tariffs and rules. Costs of studies or upgrades, if any, shall be the responsibility of the requesting municipal utility or electric cooperative utility.

Energy Efficiency for State Buildings and Equipment

The bill would require:

- New, and to the extent possible renovated, state buildings 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. The Secretary of Administration also would be required to adopt

rules and regulations recommending that new, and to the extent possible renovated, school and municipal buildings meet the same standards.

- 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.
- New or extended state leases for real property and state-owned real property to meet energy efficiency standards. The Legislature would receive an annual report identifying state-owned and leased real property where an excessive amount of energy is used.
- The bill would task the Kansas Energy Office with increasing the participation of school districts, local governments, and state agencies in the Facilities Conservation Improvements Program administered by the Kansas Corporation Commission (KCC).

Kansas Electric Generation Science and Technology Commission

The bill would create a 15-member Commission with the following membership:

- The chairpersons, vice-chairpersons, and ranking minority members of the House Committee on Energy and Utilities and the Senate Committee on Utilities, or their designees appointed from those committees;
- One member appointed by the Governor;
- Two members appointed by the President of the Senate;

- One member appointed by the Minority Leader of the Senate;
- Two members appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the House of Representatives;
- The chief of energy operations of the KCC, who would be a non-voting member; and
- The director of the division of environment at KDHE, who would be a non-voting member.

Members appointed by the Governor and the legislative leaders would have to possess expertise in:

- Global greenhouse gas regulation or practices or climatology;
- Energy conservation;
- Baseload generation and regulation; or
- Renewable energy resources.

No more than two appointees could be from a single qualification category.

The first meeting of the Commission would be convened by the Chairperson of the House Committee on Utilities. At that first meeting the Commission would elect its chairperson and vice-chairperson.

The Commission would study a variety of issues related to electric service, including:

- The actions of federal and regional entities regarding electric generation and transmission;

- The obligations of entities that generate, transmit or distribute electricity, the adequacy of the state's generation capacity, and the impact of conservation on the need for additional capacity;
- The economic impact of generation, transmission, and distribution of electricity on communities and on customers' rates;
- The impact of electric generation and transmission on the State's environment;
- The social impact of various methods of generation and transmission of electricity;
- The fuel portfolio balance of the electricity generating facilities and the effectiveness of incentives for renewable energy investment;
- The impact on tax revenues of various means of generating and transmitting electricity;
- The reports and recommendations of the Electricity Committee of the Kansas Energy Council; and
- Other issues.

The Commission would be staffed by the State Corporation Commission. Other state agencies would be required to provide assistance to the Commission at the Commission's request. 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.

Carbon Dioxide Capture

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.

Renewable Resources Standard

The bill would require that 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 Corporation Commission would be required to adopt rules and regulations to implement the renewable resources requirements.

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

The Net Metering and Easy Connection Act

The bill 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

Corporation Commission 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.

The bill would define net metering as the use of metering equipment to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by a customer-generator to the retail electric supplier.

Retail electricity suppliers would be required to make net metering available to customers up to a maximum of 5 percent of the supplier's Kansas single-hour peak load during the previous year, unless a higher amount is established by the KCC or the utility's governing body.

The utility would be required to supply, own and maintain meters and associated equipment utilized for billing. Utilities would be authorized to install, at the utility's expense, load research metering equipment in order to monitor customer generation and load. Customer-generators would be required to provide a suitable location for meters and associated equipment provided by the utility. The generation unit used by the customer-generator would have to contain a mechanism accessible by utility personnel that automatically stops the flow of electricity onto the supplier's lines in the event of a service interruption.

Customers would be billed for any electricity provided by the retail supplier in excess of the amount generated by the customer. Customers would receive credit applied to the succeeding billing period, at least equal to 150 percent of the avoided energy cost, for electricity generated in excess of that provided to the customer by the retail supplier.

Credits would expire without compensation either 12 months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier.

The existing parallel generation statute would be made a part of the Act and amended to provide customers with the option of using either the parallel generation provisions or the net metering provisions of the Act. The customer's decision would be recorded in writing and filed with the retail electricity supplier.

Regulatory Amendments

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 EPA 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 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 Kansas Corporation Commission utilizing the procedure currently available only to cooperatives with fewer than 15,000 customers.

Finally, the bill would amend current law to require the Kansas Corporation Commission (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.

Tax Incentives for Energy Efficient Improvements of Non-Owner Occupied Housing Units

The bill would create tax incentives for energy efficiency improvements of non-owner occupied housing units. The tax incentives would be available for tax years 2008 and 2009.

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.

If the amount of the tax credit exceeds the taxpayer's income tax liability for the year in which the expenditures were made, the excess amount of credit could be carried forward. The entire tax credit for expenditures made in a single year would have to be taken within five years of the expenditure.

The bill also would create an accelerated depreciation schedule for heating, ventilation, and air conditioning equipment described in the bill. Depreciation of the equipment would be taken over five years: 60 percent the first year; and ten percent each of the following four years.

The Department of Revenue would be required to report to the Legislature at the start of the 2010 Session regarding the number of taxpayers who claimed income tax credits created by the bill and the amount of those credits claimed.

Mercury Emissions Reductions

The bill would 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.

Coal-Fired Plant Emissions

The KCC and the KDHE would be required to annually identify operators of electric utilities with coal-fired generating capacity greater than 350 MW in Kansas with carbon dioxide emissions in excess of 110 percent of the statewide average emissions from coal-fired plants in Kansas with a capacity greater than 350 MW.

Background

The House Committee of the Whole amended House Sub. for SB 148 to delete provisions limiting the annual carbon dioxide emissions of the proposed new units at the Sunflower plant near Holcomb and provisions requiring the owner or operator of the Sunflower units to institute efforts that will, or have the potential to, reduce, utilize, displace, or sequester carbon dioxide. The House also amended the bill to allow that the wind tariff provision would not apply to utilities that do not have wind-generated electricity available for retail sale. The House amendment deleted provisions that would have allowed a utility, at its discretion, to provide electricity to customers who elect to receive services under the tariff only when wind-generated electricity is available from the resource. The House also amended the bill to add provisions requiring Sunflower to request that the Southwest Power Pool determine whether transmission line upgrades are necessary to deliver electricity purchased from Sunflower by a municipal electric utility or

electricity distribution cooperative, and the cost recovery mechanism under SPP tariffs and rules. The House also amended the bill to limit the carbon dioxide capture requirement only to coal-fired electric generation facilities. The House also amended the bill in regard to identifying certain operators of coal-fired plants.

The House Substitute bill replaced provisions of SB 148, as passed by the Senate, that would have allowed certain State agencies to become members of KAN-ED, with provisions regarding electricity production and regulation. The House substitute language includes:

- Provisions that would establish limitations for emission into the air of certain by-products of coal combustion at the proposed Sunflower power plant expansion;
- Provisions that impose new requirements on certain electric utilities; and
- 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.

House Sub. for SB 327 included some, but not all, of the provisions of 2008 HB 2711 and SB 515 (the latter two bills were identical as introduced) regarding electricity production and regulation. The Conference Committee on H. Sub. for SB 327 also incorporated into the bill some provisions of S. Sub. for HB 2066, as amended by the Senate Committee of the Whole (which included some, but not all, provisions of 2008 SB 515), and provisions of 2008 HB 2632, as passed by the House (regarding adding certain energy conservation costs to the electricity rate base of certain electric utilities).

The fiscal note prepared by the Division of the Budget for the introduced version of SB 148 is not pertinent to the House Substitute Bill.