

SENATE BILL No. 417

By Committee on Utilities

2-8

1 AN ACT concerning utilities; relating to electric generating units and
2 carbon dioxide emission standards; concerning the department of health
3 and environment, submission of a state plan, requirements; amending
4 K.S.A. 2015 Supp. 65-3031 and repealing the existing section.
5

6 WHEREAS, The United States Environmental Protection Agency has
7 clearly demonstrated in regulatory language, Federal Register Preamble
8 discussions, written guidance and pleadings in pending litigation that the
9 requirements of a sufficient Initial Submittal do not include a requirement
10 to submit or commit to a complete or even partial state plan before
11 September 6, 2016; and

12 WHEREAS, In developing this Initial Submittal, it is in the interest of
13 Kansas to preserve the state's options relating to implementing the federal
14 emission regulations while the validity of those regulations is being
15 litigated in court and to not commit to any binding obligations before
16 being required to do so, particularly when the state is entitled to an
17 extension of the state plan submittal deadline; and

18 WHEREAS, Due to the federal enforceability of a state plan once
19 submitted and approved by the Environmental Protection Agency,
20 premature submittal of such a state plan or Initial Submittal committing to
21 binding obligations constitutes an abrogation of the authority of the
22 legislative and executive branches to control the affairs of Kansas and
23 effects an unconstitutional delegation of state authority to the federal
24 government.

25 Now, therefore,

26
27 *Be it enacted by the Legislature of the State of Kansas:*

28 Section 1. K.S.A. 2015 Supp. 65-3031 is hereby amended to read as
29 follows: 65-3031. (a) In accordance with the requirements of ~~the~~
30 ~~environmental protection agency's rulemaking pursuant to docket EPA-~~
31 ~~HQ-OAR-2013-0602~~ 40 C.F.R. part 60, the secretary may develop and
32 submit to the environmental protection agency a state plan for compliance
33 with the regulation of carbon dioxide from any affected or existing electric
34 generating units pursuant to 42 U.S.C. § 7411.

35 (b) *In developing an initial submittal to the environmental protection*
36 *agency pursuant to 40 C.F.R. part 60, the secretary shall:*

1 (1) Promptly implement the required public input process required by
2 the environmental protection agency for a state to receive a two-year
3 extension pursuant to 40 C.F.R. 60.5765;

4 (2) determine whether the clean power plan implementation study
5 committee established in K.S.A. 2015 Supp. 66-1285, and amendments
6 thereto, meets the qualifications to conduct and oversee the public input
7 pursuant to 40 C.F.R. 60.5765;

8 (3) determine whether implementation of the proposed state plan:

9 (A) Requires new statutory authority be created for the department of
10 health and environment, the state corporation commission or other
11 relevant state agencies that would be responsible for implementing and
12 enforcing an approved state plan;

13 (B) is feasible without impairing the reliability of the electric utility
14 service in Kansas;

15 (C) is the least expensive alternative to meet the federal emissions
16 regulations without impairing the reliability of the electric utility service
17 in Kansas; and

18 (D) would require credits to be obtained from utilities or entities
19 outside the state of Kansas and how much such credits would likely cost
20 the state and the average Kansas ratepayer on an annual basis.

21 (c) Nothing in this section shall be construed to prevent the secretary
22 from seeking any additional extensions of time to submit a state plan
23 regulating carbon dioxide from any affected or existing electric generating
24 units pursuant to 42 U.S.C. § 7411.

25 (d) In filing an initial submittal to the environmental protection
26 agency, the secretary shall not make any binding commitments to submit a
27 state plan in the future or bind the state of Kansas in any way not required
28 by the express provisions of 40 C.F.R. 60.5765.

29 (e) If the two-year extension request is granted by the environmental
30 protection agency pursuant to 40 C.F.R. 60.5765, the secretary of health
31 and environment may ~~establish~~ begin developing separate standards of
32 performance for carbon dioxide emissions based upon: (1) The best system
33 of emission reduction that has been adequately demonstrated while
34 considering the cost of achieving such reduction;

35 (2) reductions in emissions of carbon dioxide that can reasonably be
36 achieved through measures taken at each electric generating unit; and

37 (3) efficiency improvements to any affected electric generating unit
38 and other measures that can be undertaken at each electric generating unit
39 to reduce carbon dioxide emissions without any requirements for fuel
40 switching, co-firing with other fuels or limiting the utilization of the unit.

41 ~~(b)~~ (f) (1) In establishing any standard of performance for any
42 existing electric generating unit pursuant to this section, the secretary may
43 consider alternative standards and metrics or may provide alternative

1 compliance schedules than those provided by federal rules or regulations
2 by evaluating: (†) (A) Unreasonable costs of achieving an emission
3 limitation due to plant age, location or the design of an electric generating
4 unit;

5 (‡) (B) any unusual physical or compliance schedule difficulties or
6 impossibility of implementing emission reduction measures;

7 (‡) (C) the cost of applying the performance standard to an electric
8 generating unit;

9 (‡) (D) the remaining useful life of an electric generating unit;

10 (‡) (E) any economic or electric transmission and distribution impacts
11 resulting from closing the electric generating unit if compliance with the
12 performance standard is not possible; and

13 (‡) (F) the potential for a standard of performance relating to unit
14 efficiency, including any requirements for a new source review or the
15 application of a best available control technology emission limitation for
16 any criteria pollutant as a condition of receiving a permit or authorization
17 for the project.

18 ~~(e) The secretary may implement such standards through flexible
19 regulatory mechanisms, including the averaging of emissions, emissions
20 trading or other alternative implementation measures that the secretary
21 determines to be in the interest of Kansas. The secretary may enter into
22 voluntary agreements with utilities that operate fossil-fuel based electric
23 generating units within Kansas to implement such carbon dioxide emission
24 standards. Such agreements may aggregate the carbon dioxide emissions
25 levels from electric resources in this state, including coal, petroleum,
26 natural gas or renewable energy resources as defined in K.S.A. 2015 Supp.
27 66-1257, and amendments thereto, that are owned, operated or utilized by
28 power purchase agreements by utilities for purposes of determining
29 compliance with such carbon dioxide emission standards.~~

30 *(2) In implementing such standards, the secretary shall not permit
31 participation in an organized carbon emission trading market without first
32 obtaining specific statutory authority.*

33 *(g) After filing the initial submittal and prior to finalizing a state plan
34 or making any other commitment to the environmental protection agency
35 relating to any requirements pursuant to 40 C.F.R. part 60, the secretary
36 shall request the participation of the state corporation commission, all
37 electric public and municipal utilities and electric cooperatives within
38 Kansas and any such other persons or entities as the secretary may find
39 necessary or helpful to assist in the development of the proposed state
40 plan.*

41 (†) (h) The secretary and the state corporation commission shall enter
42 into a memorandum of understanding concerning implementation of the
43 requirements and responsibilities under the Kansas air quality act.

1 (⊖) (i) (1) The secretary shall submit to the clean power plan
2 implementation study committee:

3 (A) A plan to investigate, review and develop a state plan no later
4 than the first week of November 2015;

5 (B) information on any final rule adopted by the environmental
6 protection agency under docket EPA-HQ-OAR-2013-0602 no later than
7 February 1, 2016; and

8 (C) any information requested by the chairperson.

9 (2) The state corporation commission shall submit information to the
10 clean power plan implementation study committee concerning:

11 (A) Each utility's re-dispatch options along with the cost of each
12 option;

13 (B) the lowest possible cost re-dispatch options on a state-wide basis;
14 and

15 (C) the impact of each re-dispatch option on the reliability of Kansas'
16 integrated electric systems.

17 (⊕) (j) The secretary shall present any proposed state plan proposed
18 for submission to the environmental protection agency to the clean power
19 plan implementation study committee for review ~~and input~~ *approval*
20 pursuant to K.S.A. 2015 Supp. 66-1285, and amendments thereto, at least
21 30 days prior to submission of such a plan to the environmental protection
22 agency or any other federal agency. If a proposed plan is disapproved by
23 the clean power plan implementation study committee, the secretary shall
24 resubmit a revised plan to the study committee. The secretary may submit
25 any proposed plan to the environmental protection agency that has been
26 submitted to *and approved by* the study committee ~~and that has not been~~
27 ~~disapproved by the committee within 30 days of the committee receiving~~
28 ~~such proposed plan.~~

29 (⊖) (k) Notwithstanding review *and approval* by the clean power plan
30 implementation study committee of the submission of a state plan to the
31 environmental protection agency, further action by the secretary to
32 implement or enforce the final approved state plan is dependent upon the
33 final adoption of the federal emission guidelines. If the federal emission
34 guidelines are not adopted or are adopted and subsequently suspended,
35 vacated, in whole or in part, or held to not be in accordance with the law,
36 the secretary shall suspend or terminate, as appropriate, further action to
37 implement or enforce the state plan.

38 (⊕) (l) Notwithstanding any other provision of law, prior to submitting
39 any state plan to the environmental protection agency, the secretary shall:
40 (1) Submit such state plan as proposed rules and regulations pursuant to
41 K.S.A. 77-415 et seq., and amendments thereto. Such submission shall be
42 expedited by any agency reviewing such proposed rules and regulations
43 pursuant to K.S.A. 77-415 et seq., and amendments thereto;

1 (2) request a review of the proposed state plan by the office of the
2 attorney general. The attorney general review may certify to the secretary
3 that the plan will not hinder, undermine or in any way harm the position of
4 the state of Kansas in any current or pending litigation relating to the
5 environmental protection ~~agency docket EPA-HQ-OAR-2013-0602~~
6 ~~agency's rulemaking pursuant to 40 C.F.R. part 60.~~ The attorney general
7 shall also review the proposed state plan concerning any impacts on the
8 protections guaranteed by the constitutions of the United States or the state
9 of Kansas; and

10 (3) not submit a state plan if the attorney general review indicates that
11 the proposed plan would adversely impact the state's legal position in any
12 current or pending litigation relating to ~~the environmental protection~~
13 ~~agency docket EPA-HQ-OAR-2013-0602~~ *the environmental protection*
14 *agency's rulemaking pursuant 40 C.F.R. part 60* or if the attorney general
15 review indicates that the proposed state plan adversely impacts protections
16 guaranteed by the constitutions of the United States or the state of Kansas.

17 (†) (m) The secretary shall be responsible for submitting *an initial*
18 *submittal pursuant to 40 C.F.R. 60.5765 and, if appropriate,* a state plan to
19 the environmental protection agency in a timely manner. ~~Notwithstanding~~
20 ~~any other provision of this act, the secretary shall prepare and submit any~~
21 ~~request for an extension of time to file a state plan, if necessary, an interim~~
22 ~~state plan or a final state plan to the environmental protection agency. Any~~
23 ~~interim or final state plan shall be submitted by the secretary no less than~~
24 ~~four calendar days prior to the federal submission deadline, or extended~~
25 ~~submission deadline, established by the environmental protection agency.~~
26 Any final state plan submitted to the environmental protection agency may
27 only be submitted if the secretary has previously submitted such plan for
28 review *and received approval* by the clean power plan implementation
29 study committee pursuant to this act.

30 (†) (n) This section shall be part of and supplemental to the Kansas air
31 quality act.

32 Sec. 2. K.S.A. 2015 Supp. 65-3031 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the Kansas register.