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1998 Through 2012 Bills Impacting Energy Production and Transportation of Energy

The following summaries describe bills enacted during the 1998 through 2012 Legislative Sessions that have a direct impact on entities that produce and transport energy and certain fuels. Other laws of a more general nature also may be of interest to energy production and transportation entities.

The summaries that follow describe laws as they existed at the time of enactment. The Kansas Statutes Annotated should be consulted regarding provisions currently in effect.

1998

Kansas Municipal Energy Agency—Expanded Wholesale Transaction Authority

HB 2552 expands the pool of cities that are eligible to become members of the Kansas Municipal Energy Agency (KMEA) by deleting language that conditioned their eligibility upon the operation of electric generation facilities in 1976. Moreover, the bill authorizes the KMEA to sell electricity wholesale to any interested purchasers, in addition to those member cities previously authorized by law.

1999

Tax Reform and Relief Act of 1999

SB 45 provides a property tax exemption for real property upon which is located facilities which utilize renewable energy resources and technologies for the purpose and as the primary means to produce and generate electricity and which is used predominantly for such purpose, to the extent necessary to accommodate such facilities. “Renewable energy resources or technologies” is defined to include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, and land-fill gas resources or technologies.

Omnibus Property Tax Bill—Property Taxation, Valuation, Exemptions, Various Related Issues

SB 78 increases from 50 to 100 the maximum number of customers who may be served by a nonprofit utility. (Determination of this maximum threshold does not take into account any customers added due to sale or transfer property of rights in tenancy.) This provision also includes shareholders in the statutory list of owners of a nonprofit public utility.

Electric Generation Facility Siting Act—Amendments

Sub. for SB 243 exempts all electric generation facilities, other than nuclear generation facilities or additions to such facilities, from requirements of the Electric Generation Facility Siting Act. The bill applies the Kansas Corporation Commission's (KCC's) process for determining whether to issue a siting permit to all applications filed for siting of nuclear generation facilities. This process no longer applies, however, to siting of any other type of generation facilities. All jurisdictional electric utilities seeking to recover from ratepayers the costs of constructing new generation facilities continue to be subject to rate proceedings before the KCC under the bill's provisions.

Electric Transmission Siting Act

House Sub. for Senate Sub. for SB 257 amends the Electric Transmission Siting Act with respect to: the circumstances under which a siting permit is required; the information that must be contained in the utility's siting application; the requirements governing the KCC's hearing on that application; and the notice of hearing.

The bill provides that a permit is not required when a transmission line is to be constructed on an easement outside a city if the easement is currently occupied by an electric line or if the line is to be constructed adjacent to the right-of-way along an interstate highway. In addition, the bill exempts from environmental study those transmission lines built on a right-of-way where an electric line currently exists.

Public Utility Loans and Pledge of Credit

Sub. for HB 2290 repeals KSA 66-1213, regarding public utility loans or credit pledged to persons or companies having an affiliated interest in the company. The repealed law required a utility, subject to the jurisdiction of the KCC, to apply to the KCC for approval before the utility could loan money or pledge its credit to its affiliate.

Upon receipt of the application, the KCC had up to ten days to conduct an investigation, if deemed necessary, and either approve the application or schedule a hearing. The KCC had to approve the application, unless it determined the loan or pledge substantially impaired the utility's financial condition or its ability to maintain sufficient and efficient service.

Although the bill exempted utilities from the requirement for obtaining the KCC's approval as a precondition for making a loan or pledging credit to an affiliate, the utility must still report to the KCC the terms and conditions of any such loan or pledge. The utility must notify the KCC within ten days after making the loan or pledging the credit.

Parallel Electric Generation Services Act Amendments

HB 2245 amends and expands the law authorizing contracts for parallel generation service to include a provision to promote in Kansas the generation of electricity using renewable resources. The statutory provision will remain in effect that requires a public utility to enter into a contract with a customer authorizing that customer's generation facility to connect to the utility's delivery and metering system. The customer may continue to sell excess energy produced by the generation facility back to the utility and receive "fair and equitable" compensation for the sale. Although the specific terms are not statutorily defined, compensation has been generally determined by the utility at an amount equal to avoided fuel cost. The terms of compensation are included in information filed by the utility with the KCC. In addition to compensation provided customers of electric public utilities described above, an enhanced level of compensation will be provided to customers meeting certain conditions, as discussed below.

The bill applies parallel generation service requirements to customers of all utilities: investor-owned, all rural electric cooperatives, and municipally-owned or operated utilities. The bill makes utility payments to customers for excess energy sales more attractive by requiring the compensable amount be not less than 150 percent of the utility's monthly system average cost of energy per kilowatt hour. However, this enhanced level of compensation will be offered to residential customers who own renewable generators with a capacity of 25 kilowatts or less or commercial customers who own renewable generators with a capacity of 100 kilowatts or less. The bill also authorizes the utility to determine the method of compensation (credit on a customer's account or payment at least annually or when the total compensation due is \$25 or more).

Finally, the bill authorizes the Kansas Development Finance Authority (KDFA) to issue revenue bonds to pay for the construction, renovation, or repair of facilities which generate electricity solely by use of hydropower. To qualify for KDFA financing, such facilities must have a capacity of more than 2 megawatts but less than 25 megawatts.

Incentives for Independent Power Producers

HB 2266 defines "independent power producer (IPP) property" as all or any portion of property used solely in the generation, marketing, or sale of electricity generated by an electric generation facility or addition to a facility. An IPP must be newly constructed and placed in service on or after January 1, 2001. It may not be in the rate base of any electric public utility, rural electric cooperative, or municipal electric utility. It may not generate electricity by nuclear resources or renewable energy resources. However, additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, will not preclude such facilities from public utility regulation.

The bill provides IPPs with property tax exemptions and the use of revenue bond financing by the KDFA for the construction, purchase, or installation of pollution control devices at IPP facilities.

IPP property will be exempt from property taxation from and after commencement of construction of the generating facility and any pollution control devices installed at the facility and for the 12 taxable years immediately following the taxable year in which construction or installation of the property is completed. For peak load plants and pollution control devices at such plants, the tax exemption will apply for six taxable years immediately following completion of construction or installation. These tax exemption provisions for both types of plants and pollution control devices became effective on January 1, 2001.

Electric Public Utilities—Expanded Use of Construction Work in Progress

HB 2268 provides the following incentives for the construction in Kansas of certain electric utility property owned or operated by Kansas public utilities.

- The expanded application of an accounting treatment which allows into the rate base any public utility's construction work in progress (CWIP) of generation facilities and transmission lines to be placed in service on or after January 1, 2001. (Under prior law, construction costs of such facilities and lines could not be included in customers' rates until the facilities and transmission lines were completed and ready to provide service.) To qualify for CWIP, electric generation facilities may be newly constructed or additions to existing facilities. However, they may not be used to generate electricity using nuclear resources or renewable energy resources. Transmission lines eligible for CWIP may include towers, poles, and other necessary property. These lines also must be connected to an electric generation facility that is eligible for CWIP.
- Public utilities will be eligible to receive revenue bond financing from KDFA for the construction, purchase, and installation of pollution control devices at electric generation facilities that are eligible for CWIP.
- Eligible electric generation facilities, pollution control devices at such facilities, and eligible transmission lines will be exempt from all property tax levies. That exemption will apply from and after commencement of construction of such facilities (except for peak load plants) or transmission lines and from and after purchase or commencement of construction or installation of pollution control devices at non-peaking plants for ten taxable years immediately following the year in which construction is completed. The exemption provisions for all this property took effect on January 1, 2001.
- The term "peak load plant" is defined in the bill as an electric generation facility used during maximum load periods. The property tax exemption provisions for peak load plants and pollution control devices installed at such plants also took effect on January 1, 2001. However, the tax exemption is authorized for four years following the year in which construction is completed, rather than ten years for the nonpeaking facilities described above.

Expanded Authority to Intervene in Rate Proceedings

HB 2397 authorizes municipalities to intervene on behalf of persons located within its boundaries in public utility rate proceedings before the KCC. Under prior law, municipalities could only intervene before the KCC in their capacity as consumers of public utility services, but not on behalf of their residents (residential and small business customers). The Citizens' Utility Ratepayer Board continues to be statutorily authorized to intervene in such proceedings on behalf of residential and small business customers.

Income Tax Credit for Business Research and Development

HB 2055 provides a permanent income tax credit for business research and development. The bill authorizes a 6.5 percent credit for research and development expenditures in Kansas, based on the amount by which such expenditures exceed the business' actual expenditures for that purpose in the tax year and the two preceding tax years. In any tax year, the maximum deduction from tax liability is 25 percent of earned credit plus carryover amounts. Tax credits in excess of a business' state tax liability for a given tax year may be carried forward.

Any expenditures eligible for a Kansas research and development tax credit also are eligible for a federal itemized income tax deduction or, for an expanded level of research activity, a federal research tax credit. However, if the business receives a federal or state grant and uses grant proceeds for research and development expenditures, that taxpayer cannot claim a state credit for those expenditures.

Agricultural Ethyl Alcohol Incentive

HB 2011 amends the law that provides direct incentives for the production of ethyl alcohol. Specifically, the bill provides for an incentive of \$.05 for each gallon of agricultural ethyl alcohol sold by the producer to an alcohol blender with an annual cap of \$2 million. This incentive is only for current producers. After three years, this incentive ends. Any amount of money left at the end of the year is to be transferred to meet the needs of the new production incentive described below. The bill creates the current production account in the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund.

In addition, the bill creates an incentive for new or expanded production of ethyl alcohol. This incentive is for facilities that have new production of at least 5 million gallons. No incentive is available for new or expanded production over 15 million gallons. The incentive for expanded or new production is \$.075 per gallon and is limited to seven years. The bill creates the new production account in the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund. When the current producer incentive ends, the total dollar amount of incentive for new or expanded production will be \$3.5 million. Any moneys left at the end of the year will be held in the new production account for the next year.

The agricultural ethyl alcohol incentive expires on July 1, 2011.

Kansas Open Records Act and Security Measures

Sub. for SB 112 amends the Kansas Open Records Act (KORA). The bill exempts from KORA all records posing a substantial likelihood of revealing security measures that protect systems, facilities, or equipment used in the production, transmission, or distribution of:

- Energy;
- Water;
- Communications services; or
- Sewer or wastewater treatment systems, facilities, or equipment.

Security measures are those that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion, or affect the operation of government by disruptions of public services, mass destruction, assassination, or kidnapping.

Electric Utilities and Cooperatives

SB 480 amends two statutes in the Retail Electric Suppliers Act that concern retail electric suppliers, the annexation by a city of territory served by such retail suppliers, and the termination of service rights by a city. The bill also amends a statute that concerns electric cooperatives.

Whenever a city proposes to annex land located within the certified territory of a retail electric supplier, the city shall:

- Provide notice to the retail electric supplier;
- Negotiate for the issuance of a franchise agreement with the retail electric supplier certified to serve the annexed area; and
- Have the final selection of which supplier receives a franchise to operate within the annexed area.

A retail supplier having both a certificate of convenience and a franchise is not required to obtain a new franchise for the annexed area. When selecting a supplier to operate within the annexed area, the city must consider nine factors set out in the bill. Under the new provisions, any retail electric supplier aggrieved by the decision made by the city annexing land may, within 30 days after the city's final decision, appeal the decision in the district court in the county in which the annexed area is located. In the event of an appeal, the supplier providing service at the time of annexation is to continue to serve the annexed area until the appeal is concluded.

Another amendment changes one of the components in the formula for determining the compensation to be paid to the retail supplier when the supplier and the supplier who is newly authorized to provide electric service cannot reach a mutual agreement on the amount of

compensation to be paid by the latter. The same change is made in a statute that concerns the termination of the service rights of a retail electric supplier holding a valid franchise when the service rights are terminated and assumed by a city.

A statute that concerns cooperatives serving fewer than 15,000 customers, are principally retail suppliers of power, and which in certain circumstances may elect to be exempt from the jurisdiction of the KCC, is amended to require an exempt cooperative to maintain a schedule of rates and charges at its headquarters and to make copies available to the general public. An exempt cooperative failing to meet the requirement for making rates and charges available could be subject to a maximum civil penalty of \$500.

Public Utilities and Public Right-of-Way Fees

Sub. for SB 545 allows a public utility, which is assessed by a city and which collects and remits fees associated with the utility's use, occupancy, or maintenance of its facilities in the public right-of-way, to file a tariff with the KCC. The tariff may be added to the end-user customer's bill, statement, or invoice as a surcharge equal to the prorated share of any fee. Costs are not to include expenses covered by any other cost recovery mechanism in existence as of April 1, 2002, including franchise fee and relocation expenses. The bill provides the same relief for costs incurred by a public utility in excess of those normal and reasonable costs incurred applying good utility practices due to actions of a city's governing body. The bill's provisions do not apply to telecommunications public utilities.

The provisions of the first three sections of the bill sunset on June 30, 2003.

The bill also allows the KCC to authorize electric and natural gas public utilities to recover costs incurred from implementing security measures used to protect electricity and natural gas production and transmission. Such authorization sunsets on July 1, 2004.

Retail Electric Service Statutes and Station Power

HB 2746 amends retail electric service statutes by defining station power and exempting it from being classified as retail electric service. Station power is the electricity used by a generating facility owned by a utility or a generating plant operated as a merchant power plant as specified in subsection (e) of KSA 66-104 to operate generating equipment, but not electricity used for heating, lighting, air conditioning, or other general office needs of the generating facility. The provisions only apply to those generating plants placed in use on or after January 1, 2002.

The electricity could originate from the same generating facility or be provided through the electrical grid *via* transformation. Station power also is included in the definition of "distribution line."

The bill allows the KCC to authorize an electric public utility to retain revenues from wholesale off-system sales of electricity generated from renewable power resources. Renewable resources include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas located in Kansas.

The bill permits, upon authorization by the KCC, an electric public utility to retain 65 percent of wholesale off-system electricity sales if the electricity was purchased at not less than

the average price paid by the utility in contracts lasting five or more years. The bill also permits retention of 50 percent of net revenues from all other wholesale off-system electricity sales, provided its source is a renewable technology. Revenues also are permitted to be retained from sales of renewable attributes, which are tradeable energy or tradeable emission credits, or other market instruments originating from renewable energy sources.

Rural Kansas Self-Help Gas Act—Enactment

SB 547 enacts the Rural Kansas Self-Help Gas Act. Under the bill, any rural gas user who desires to construct a pipeline connection to a gas supply system and any gas provider assisting the rural gas user is not considered to be a public utility. If the rural gas service is provided within an area where a public utility holds a certificate, the rural gas user or its gas provider must first notify the existing gas service utility of the intent to provide a rural gas service. Under the bill a “rural gas user” means any person currently using natural gas from a wellhead or gathering facility for agricultural purposes on property they own, lease, or operate that is located outside city limits and not presently receiving gas service from an existing gas service utility.

When notified, an existing gas service utility has 30 days to develop plans and propose an offer to the potential rural gas user. The proposed plan is to include plans for installing facilities, price of natural gas, and projected completion date. Failure of the existing gas service utility to propose an offer or complete the project by the projected completion date, unless otherwise agreed to by the rural gas user and the existing gas service utility, would cause the existing gas service utility to waive its exclusive right to serve the rural user. If the potential rural gas user does not accept the offer presented by the existing gas service utility, the existing gas service utility releases the rural gas user from the certificated area or may request a determination from the KCC to approve the utility’s plan or allow the rural gas user to use a different public utility or gas provider to provide rural gas service. The KCC has 30 days to complete the determination. The KCC could suspend its determination for an additional 60 days for sufficient cause.

The bill also requires that all facilities comply with all applicable pipeline safety law.

2003

Determination of Rate-Making Principles and Treatment

Sub. for SB 104 permits a public utility to file a petition with the KCC for a determination of the rate-making principles and treatment that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility’s investment in either a transmission facility or a generating facility. The petition has to occur prior to the undertaking of construction or participation in either the transmission facility or the generating facility.

If a public utility seeks a determination of rate-making principles and treatment for a generating facility, then, as a part of the filing, it must submit a description of its conservation measures, demand side management efforts, and submit its ten-year generation and load forecasts and a description of all power supply alternatives.

If the KCC fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, those principles proposed by the public utility are deemed to have been approved by the KCC and are binding for rate-making purposes during the life of the generating facility or transmission facility or during the term of the contract on a generating facility.

The public utility has one year from the effective date of the KCC's determination to notify the KCC whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

Under the bill, "transmission facility" means:

- Any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of 69 kilovolts or more of electricity; or
- Any new line, and supporting structures and equipment, being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

Also under the bill, the term "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000, annually.

Renewable Energy Cooperatives, Transmission Line Financing, and Interconnection Agreements

HB 2018 enacts the Renewable Energy Electric Generation Cooperative Act. The bill also authorizes the KDFA to issue revenue bonds to finance the construction, upgrade, or acquisition of electric transmission lines. Finally, the bill imposes duties on the KCC related to interconnection agreements between electric utilities and generators of electricity from renewable resources.

Renewable Energy Cooperatives

The Renewable Energy Electric Generation Cooperative Act provides for the creation of cooperatives by five or more persons. The purpose of cooperatives created under the Act is to generate electricity from renewable resources. All such cooperatives must be nonprofit, membership corporations. Electricity generated by these cooperatives may be sold only at wholesale. Members of these cooperatives must operate generation facilities that use renewable resources and have a capacity of at least 100 kilowatts of electricity.

Members also must agree to either sell at wholesale through the cooperative any excess electricity they generate or sell through the cooperative any renewable attributes or both. Renewable attributes are defined by existing law as tradeable renewable energy credits (with or without other features), tradeable emissions credits, emissions offsets or other market instruments created or obtained by use of renewable energy resources or technologies. Members who do not implement the agreement within two years no longer qualify for membership in the cooperative. The bill provides for a cooperative's bylaws to place other conditions on membership.

The bill defines “renewable resources or technologies” to include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas resources or technologies. “Person” under the bill is defined to include any natural person, firm, association, corporation, limited liability company, business trust, or partnership.

The bill establishes a framework for organization of renewable energy cooperatives that parallels the statutory framework in existing law for other electric cooperatives. In addition, these cooperatives are subject to the authority of the KCC. Further, the KCC must approve mergers of renewable energy electric cooperatives.

A renewable energy electric cooperative must pay for: its use of existing distribution and transmission systems to transmit electricity, the costs of a generation interconnect study (if such a study is required), the costs of transmission system improvements, and other upgrades necessary for system operation. Any such costs are to be determined through negotiations between the cooperative and the owners of the distribution or transmission system.

Members of renewable energy electric cooperatives located in the territory of a retail electric supplier may be charged a monthly fee for services provided by the retail supplier. This fee is to cover costs of providing standby electric service, distribution system repair and maintenance, and other reasonable costs of being a provider of last resort. Renewable energy cooperatives and cooperatives' members are prohibited specifically from reselling electricity to their providers of last resort.

Transmission Line Financing

The bill also authorizes KDFA to issue revenue bonds to pay for construction, upgrading, and acquisition of electric transmission lines, and certain related expenses. Transmission lines eligible for bond financing are those used for transfer of at least 69 kilovolts of electricity. “Electric transmission line” is defined to mean any line or line extension at least five miles long and used for bulk transfer of electricity. The availability of the bond financing mechanism created by the bill is not restricted to renewable energy electric cooperatives. Bonds issued under authority created by the bill are payable from revenue generated from the use of transmission lines.

Interconnection Agreements

Finally, the bill requires that by September 30, 2003, the KCC establish standard provisions, including applicable fees of interconnection agreements between electric public utilities and generators of electricity from renewable resources. This provision of the bill is applicable to parallel electricity generators, as well as to renewable energy cooperatives.

Electricity Transmission

HB 2130 amends existing law regarding siting of electrical power transmission lines. The bill also enacts new law regarding recovery of electricity transmission costs.

In regard to transmission line siting, the bill requires the KCC to consider specific benefits during its decision making process regarding the reasonableness and necessity of the

proposed line location. Benefits enumerated in the bill are those accruing to consumers, inside and outside the state, and to Kansas economic development.

The bill also enacts a new statute, allowing electric utilities to pass through to retail customers costs of electric transmission in a manner consistent with the determination of transmission-related costs by an appropriate regulatory authority. Those costs will be added to customers' bills as a separate transmission delivery charge. The initial transmission delivery charge will be based on transmission-related costs approved by the KCC in the utility's most recent retail rate filing. When a transmission delivery charge initially becomes effective, the utility's retail rates will be reduced so that the sum of the retail rate and the transmission charge is equal to the retail rate in effect immediately before the transmission charge became effective.

The transmission delivery charge subsequently can be adjusted by the utility any time a transmission-related cost is incurred as a result of an order of a regulatory authority with jurisdiction over transmission. Electric utilities are required to file a report with the KCC at least 30 business days prior to changing the transmission delivery charge. If the KCC determines that all or part of the charge did not result from an order of a regulatory body, the KCC may require the charge to be changed and impose appropriate remedies. A change in the transmission charge will not trigger a review or adjustment of the retail rates in effect at the time of the transmission charge change.

Energy Efficiency Standards

HB 2131 amends the law regarding thermal efficiency standards of commercial, industrial, and residential buildings. Specifically, the bill:

- Designates the International Energy Conservation Code 2003 as the thermal efficiency standard for new commercial and industrial buildings;
- Requires disclosure of residential building energy efficiency information to the buyer or a prospective buyer, upon request or prior to closing; and
- Provides for rewording of the residential energy efficiency disclosure form to refer to the International Energy Conservation Code 2003 and to a Home Energy Rating score of 80 or greater on the Mortgage Industry National Home Energy Rating System Accreditation Standard (June 15, 2002).

Recovery of Security Costs

HB 2374 enacts the Kansas Energy Security Act, which directs the KCC to include specified provisions in its procedures to implement KSA 66-1233. (The cited statute was enacted in 2002 and provides for gas and electric utilities to recover from customers certain costs incurred from implementing security measures to protect electricity and natural gas production and transmission. The 2002 enactment will sunset on July 1, 2004.)

Procedures implemented pursuant to the bill and provisions of the 2002 statute apply to security expenditures made after September 11, 2001. The KCC's determination of whether a

security-related expenditure is prudent may not be based on standard regulatory principles and methods of recovery.

Specifically, the bill requires the KCC to:

- Treat information regarding the amount and method of cost recovery as confidential;
- Issue protective orders for filings connected with recovery of security costs to enable the Citizens' Utility Ratepayer Board to receive and review documents if it intervenes in these cases;
- Create procedures that reflect rules of other regulatory entities governing the release of information and documentation submitted to the KCC, its staff, or interveners;
- Prevent the security cost recovery from being identified on customers' bills;
- Provide that the security cost recovery charge be allocated and added to all wholesale and retail rates and future contracts (Any contract existing on the effective date of the Act, which did not specifically prohibit the addition of these charges, was to have security cost recovery charges added.);
- Provide for an expedited review of security-related filings;
- Provide for review only of security-related items to ensure that proposed items provide enhanced security;
- Deny any expenditure that is not prudent or is not related to security; and
- Allow recovery of capital expenditures over a period no greater than one-half the usable life of the capital investment.

Biodiesel Standard; State Purchases of Ethanol and Biodiesel

Sub. for HB 2036 adds a new provision to the illegal acts section of the Petroleum Products Inspection Act. The bill makes it a violation of the Act to represent that diesel fuel is or contains biodiesel fuel blend or otherwise to represent that diesel fuel is made from renewable resources, unless not less than two percent of the diesel fuel mixture is mono-alkyl esters derived from vegetable oil, recycled cooking oil, or animal fat. The bill also provides that biodiesel fuel used in biodiesel fuel blends are to conform to specifications by the American Society of Testing and Materials, issued in March of 2002, or later versions adopted through rules and regulations of the Secretary of Agriculture.

In addition, the bill requires all bulk motor-vehicle fuels purchased by any state agency for use in state-owned motor vehicles be fuel blends containing at least 10 percent ethanol, as long as the price is not more than 10 cents per gallon greater than regular fuel.

Also, the bill requires that, where available under current state purchasing agreements, individual motor vehicle purchases for state-owned motor vehicles are to be motor vehicle blends containing at least 10 percent ethanol, as long as the price is not more than 10 cents per gallon greater than regular fuel.

Lastly, the bill requires that when there are diesel fuel purchases for state-owned diesel powered vehicles and equipment, those purchases are to be a 2 percent or higher blend of biodiesel, where available, as long as the price is not greater than 10 cents more per gallon than the price of diesel fuel.

Kansas Propane Education and Research Council

HB 2038 creates the Kansas Propane Education and Research Council governed by ten members. The council is to be appointed by the Governor from a list of nominees submitted by “qualified industry organizations.” Four members of the council are to represent retail marketers; two members are to represent wholesalers, resellers, suppliers, and importers; two members are to represent manufacturers and distributors of propane equipment and transporters; one is to represent the public; and one, an *ex officio* member, is the State Fire Marshal or that person’s designee. The council reports annually to the House and Senate Agriculture Committees on its programs, projects, and activities.

The Council is required to develop programs and projects implementing the Act. The programs and projects include enhancement of consumer and employee safety and training programs, with safety issues to receive the first priority. Moneys may not be used to purchase equipment for programs or projects by a private, for profit corporation or other business association or entity. Also, no funds of the Council may be used to purchase propane products and equipment or to replace propane products and equipment, including through cost-share programs, for Kansas consumers, except the Council may purchase propane products and equipment for display in programs or projects. Except as provided for in the reports to the standing agriculture committees, the moneys collected by the Council may be expended only for the purposes of the legislation and may not be used in any manner for influencing legislation or for political campaign contributions. Meetings of the Council and any committees and subcommittees of the council are subject to the Open Meetings Act. The bill permits the hiring of an executive director and other employees.

The expenses of the Council are to be funded by the imposition of an initial assessment of not more than two-tenths of one cent per gallon of odorized propane. The bill establishes a maximum assessment at three-tenths cent per gallon and restricts the increase the Council may make to one-tenth cent per gallon annually. The assessment is to be paid by owners of propane at the time of odorization or at the time of import of odorized propane. The bill limits the administrative costs of operating the Council to 10 percent of the funds collected in any fiscal year.

2004

Security Measures—Recovery of Costs

SB 382 extends the authority of the KCC to allow electric and natural gas public utilities to recover costs incurred as a result of implementing security measures for the protection of

electric and natural gas production and transmission. The prior expiration date was July 1, 2004. The bill extends the sunset to July 1, 2007.

Electricity Transmission and Generation

HB 2516 provides incentives to increase electric transmission and generating capacity.

New provisions:

- Authorize KDFA to assist electric transmission line owners or operators with marketing of bonds to finance construction and upgrade of transmission lines if a majority of the cost of construction and upgrade is in Kansas and, if the out-of-state portions are certified by the KCC, to improve reliability and security of the state's transmission system or contribute to the long-term economic well being of the state;
- Provide for the KCC to approve recovery, over a period of 15 years, of capital expenditures for construction or upgrade of transmission lines used for bulk transfer of 34.5 kV or more of electricity under certain circumstances;
- Authorize any entity that constructs a minimum 100 kW electric generation facility to grant or lease interconnection facilities to transmission operators;
- Authorize the KCC to approve:
 - The sale of transmission lines to a FERC-approved independent transmission company or system operator; and
 - Any contract for operation of transmission lines by a FERC-approved independent system operator or regional transmission organization. The KCC would have to afford any proceeds from such a sale or contract the appropriate rate-making treatment, including reasonable sharing of proceeds between ratepayers and the utility;
- Require the KCC to allow utilities to retain 10 percent of net revenue from sales of electricity generated by new or expanded capacity built in a county that had 5 percent or less population growth between the two most recent federal censuses. This provision does not apply to net revenue resulting from the sale of electricity generated from renewable resources and which is addressed under the law;
- Require the KCC to allow electric utilities to include in rates the utility's prudent expenditures for research and development by the utility or for investment in research and development by a nationally recognized research center provided that the research and development expenditures or investments are intended to enhance reliability or efficiency of electric utility service; and
- Define "electric transmission line" to mean any line or extension of a line with an operating voltage of 34.5 kV or more that is at least five miles in length and is to be used for the bulk transfer of electricity.

Prior law is amended to:

- Define "electric transmission line," for purposes of determining the value of a utility's property during KCC rate-making action, to mean any transmission line at least five miles long and used for bulk transfer of at least 34.5 kV of electricity. Those transmission lines will be considered to be completed and dedicated to commercial service even though construction is not complete;
- Lower from 69 kV to 34.5 kV the minimum capacity of transmission lines for which a utility may seek determination of rate-making principles from the KCC prior to construction; and
- Authorize KDFA to issue bonds for the construction, upgrade, or acquisition of right-of-way for electric transmission lines that are owned and operated by a municipal electric utility or that will be used for the transfer of electricity with an operating voltage of a minimum of 34.5 kV, down from the 69 kV minimum in prior law.

Bonds—Prototype Electrical Generation

HB 2703 amends a statute that authorizes the KDFA to issue revenue bonds for the construction, renovation, repair, and related costs of one or more facilities that generate electricity solely by the use of hydropower and which meet other statutory requirements. The amendment adds a second type of facility to those for which revenue bonds may be issued. The type of facilities added to the statute are those facilities, or portions thereof, that: generate electricity; are a prototype for the generation of electricity and hydrogen with limited emissions; are for research in connection with related technologies; and that include a research or teaching component involving one or more post-secondary educational institutions or faculty members of such institution. Any revenue bonds issued by the KDFA are to be payable from revenues arising from the generation of electricity or from other revenues available to be pledged by the Authority.

Leases or Easements for Wind Energy Resource Development; "Mother Hubbard" Deeds and Conveyances

HB 2037 authorizes, but does not require, filing of every instrument that conveys any estate or interest created by a lease or easement involving wind resources to generate electricity. Any such instrument that is filed would be filed in the office of register of deeds of the county where the real estate is situated. The bill also specifies information to be included in such instrument, regardless of whether it is filed with the county. Those instruments must contain:

- A description of the real property subject to the easement and a description of the real property benefiting from the wind lease or easement;
- A description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the wind is prohibited or limited;

- All terms or conditions under which the lease or easement is created or may be terminated; and
- Any other provision necessary or desirable to execute the instrument.

If any such instrument is filed with the county, provisions regarding the compensation received by the owner of the property need not be included.

The bill also requires, when a recorded deed or conveyance covering mineral or royalty rights purports to include such rights not owned by the grantor, the deed or conveyance must be corrected. This provision applies when the deed or conveyance includes a general provision (sometimes called a “mother hubbard” clause) that should not have been included in the instrument. In those instances, any party with an interest in the real estate covered by the instrument may request the grantee or grantor, as applicable, correct any mistake caused by the general conveyance provision applicable to other property. The bill defines a “mother hubbard clause” to be a provision in a deed or other written instrument intended to convey an interest in real estate and which describes all of the grantor’s property in a particular county.

Any grantee or grantor who refuses or neglects to correct the legal description within 30 days after a written request has been made will be liable for maximum damages of \$10,000 per title affected and reasonable attorney fees. Additional damages could be awarded if warranted by the case. If the legal description has not been corrected within the time period specified, the court must expedite an action to quiet title. Any court ruling resulting from such action does not relieve the grantee or grantor from damages or other responsibilities imposed by the bill.

2005

Corporation Commission Participation in Regional Transmission Organization

HB 2407 enacts a new statute authorizing the KCC representative to a regional transmission organization (RTO) to participate fully in the decision making activities of the RTO, if the organization is recognized by the Federal Energy Regulatory Commission (FERC) and at least one Kansas electric public utility is a member of the RTO. The bill also provides that authority contained in the bill neither limits the KCC’s regulatory jurisdiction nor its authority to appeal decisions of an RTO. The bill specifically does not relieve the KCC of its obligation and authority to ensure that electric public utilities provide efficient and sufficient service.

Utility Emergencies

HB 2461 enacts a new statute as part of the Kansas Emergency Management Act, authorizing the Division of Emergency Management (Division) to declare a limited emergency related to utility services in certain circumstances. The Division may declare an emergency at the request of any utility when conditions exist that constitute an emergency as described in regulations of the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation.

The bill specifies an emergency may be declared only for the purpose of exempting drivers of utility service vehicles from limitations on hours of service prescribed by regulations of the KCC. The exemption is further limited by federal regulations pertinent to such exemptions.

The Adjutant General is authorized to adopt rules and regulations to implement the Act.

Municipal Energy Agencies

HB 2045 amends three statutes that govern municipal energy agencies. Under Kansas law, municipal energy agencies may be formed by two or more cities to secure electricity for the participating cities.

The bill repeals the following:

- The minimum size requirement for energy agencies' boards of directors and the requirement that board members reside within one of the participating cities;
- The requirement that energy agencies abide by state budget and cash basis laws; and
- The requirement that municipal energy agencies make filings with the Secretary of State pursuant to the Uniform Commercial Code to perfect a security interest against personal property or fixtures of the agency.

Kansas Electric Transmission Authority

HB 2263 enacts the Kansas Electric Transmission Authority Act, creating the Kansas Electric Transmission Authority (KETA). The purpose of KETA is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the state's economy, and facilitate the consumption of Kansas energy through improvements in the state's electric transmission infrastructure. KETA will fulfill that purpose through building electric transmission facilities or by facilitating the construction, upgrade, and repair of third party transmission facilities.

The bill also enacts a new law authorizing the KCC to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill are those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities are subject to the jurisdiction of the KCC for implementation of the Act.

Finally, the bill amends prior law to authorize the KCC to determine the reasonableness of and regulate and supervise curtailment of service from a gas gathering system to an end-use customer.

Transmission Authority Governance

The KETA Board of Directors will be composed of seven voting members:

- Three appointed to staggered four-year terms by the Governor, subject to Senate confirmation; and
- The chairpersons and ranking minority members of the House and Senate utilities committees.

The Governor's appointees must be qualified Kansas voters who possess special knowledge or have at least five years' managerial experience in the field of electric transmission or generation development. No more than two gubernatorial appointees may be members of the same political party. A member of the Board appointed by the Governor may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas Administrative Procedure Act. Board members will be paid compensation (\$35/day, or legislative pay), subsistence, expenses, and mileage as provided by statute for other state boards and commissions.

Transmission Authority Powers

In order to carry out the purposes of the Act, KETA has broad, general authority, including the ability to adopt rules and regulations. KETA also may plan, finance, construct, develop, acquire, own, and dispose of transmission facilities. In addition to general authority to function as a public entity and to implement the Act, KETA may contract for maintenance and operation of transmission facilities. KETA cannot directly operate or maintain transmission facilities.

Other specific powers of KETA include the ability to enter into contracts with KDFA which is authorized to issue bonds and provide financing for construction, upgrading, or repair of KETA's transmission facilities, and acquire right-of-way for those facilities. KDFA bond revenue also may be used to make loans to finance construction, upgrading, or repair of transmission facilities owned by third parties, and acquire right-of-way for those facilities.

Transmission facilities financed with KDFA-issued bonds need not be wholly located in Kansas if the majority of the cost of the project is for facilities located within the state and the KCC certifies that those portions of the project located outside the state will improve the reliability and security of the state's transmission system or will contribute to the long-term well being of Kansas.

KETA will recover its costs through tariffs of the Southwest Power Pool (SPP) Regional Transmission Organization. If all costs are not recovered through SPP tariffs, KETA will recover the remainder of its costs through assessments against utilities that benefit from KETA projects and that have retail customers in Kansas. Each utility's assessment will be based on its benefit from the project as determined by the KCC. Electric utilities will recover costs attributable to such assessments from their customers in a manner approved by the KCC or, in the case of municipal and cooperative electric utilities, by their governing boards.

Transmission Authority Limitations

KETA may exercise the rights and powers granted by the Act in regard to transmission infrastructure only:

- If private entities are not meeting the need and are not willing to finance and own required new infrastructure; and
- In regard to transmission facilities approved by the SPP.

KETA is required to publish notice of its intent to provide facilities or services in the *Kansas Register* and a newspaper and trade magazine in the area where the service or facilities will be provided. Private entities will have three months to notify KETA of their intention and ability to perform the acts, finance, and construct the facilities, or provide the service contemplated by KETA. If no private entity expresses its intent to build the facility or provide the service, or if the private entity fails to begin the project within six months, KETA may proceed with the project. If a private entity begins but fails to make satisfactory progress toward completion of a project, KETA may provide notice of its intent to complete the project and proceed to do so if no private entity expresses willingness to complete the project.

Transmission Authority Oversight and Regulation

KETA is required to provide an annual report to the Governor and the Legislature. The report must include any audit of KETA performed under the Act. The Legislative Post Audit Committee may authorize financial compliance audits of KETA. The cost of any post audit will be borne by KETA.

KETA is not supervised or subject to regulation by the KCC, except in regard to wire stringing and transmission line siting. In those instances, other existing statutes govern.

Transmission Authority Taxation

KETA is not required to pay Kansas income tax and its purchases are exempt from sales tax. KETA's transmission facilities are exempt from property tax to the extent they would be exempt if privately owned.

Transmission Authority Cooperation with State and Local Entities

State agencies and local units of government must provide information, assistance, and advice requested by KETA. Those entities will be reimbursed by KETA. State agencies and local governments also are authorized to lease, lend, grant, or convey land to KETA without advertising or obtaining a court order for the transaction.

Transmission Authority State General Fund Loan

Any State General Fund financing provided by the Legislature to KETA would be a loan to be repaid with interest in a single payment within ten years. Any such loan will not be

considered an indebtedness of the state and would accrue interest at the statutory rate set for inactive state accounts.

KETA Open Meetings and Open Records Acts Exceptions

Exceptions to the Open Meetings and Open Records acts are provided to protect competitive positions of third parties and the security of transmission facilities. Those exceptions apply to:

- Proprietary information obtained with a promise of confidentiality;
- Information about the location of transmission facilities and related security measures; and
- Information about transmission capacity or availability that is not generally available to all electricity market participants.
- Other exemptions to the Open Meetings and Open Records Acts also are available to KETA.

KETA Board Conflicts of Interest

Board members and staff are required to disclose in writing any interest in contracts or transactions with KETA. No KETA member or staff with an interest in a KETA transaction may participate in authorization of the transaction.

Board members are required to file statements of substantial interest as required by Kansas' ethics laws. Employees, agents, and advisors of KETA who have a substantial interest in contracts or transactions with KETA also are required to file statements of substantial interest.

Recovery of Costs of Electric Transmission Facility Construction and Improvement

In addition, the bill authorizes the KCC to approve inclusion in retail electric rates of regulated electric utilities, electric cooperatives, and municipal electric utilities' costs associated with the construction or improvement of electric transmission facilities under certain circumstances. Costs covered by the bill are those incurred for construction or upgrading of electric lines with an operating voltage of at least 115 kilovolts. Electric cooperatives and municipal electric utilities are subject to the jurisdiction of the KCC for implementation of the Act. The KCC is authorized to approve inclusion of the specified costs in retail utility rates if it finds:

- That a regional transmission organization identified the construction or upgrade as appropriate for reliability of the electric transmission system or for economic benefit to transmission owners and customers; and
- A state agency has determined the project will provide measurable economic benefit to Kansas electric consumers that exceeds anticipated project costs.

The KCC is authorized to approve recovery of project costs in retail electric rates only if those costs are not otherwise being recovered. The KCC is authorized to consider the following when determining whether to approve inclusion of project costs in retail rates:

- The speed with which electric consumers will benefit from the transmission facility;
- The long-term benefits of the facility to Kansas electric customers; and
- Whether those factors outweigh other less costly options.

Applications for cost recovery for projects covered by the Act must include information required by the KCC to enable it to make those determinations.

The KCC will be required to conduct an expedited review of any request filed pursuant to the Act if the application includes evidence that expedited construction or upgrade will provide significant, measurable economic benefit to Kansas electric consumers. Regional transmission organization recommendation or approval of a project covered by the Act creates a rebuttable presumption of the appropriateness of the project for system reliability or economic benefit.

Any project cost recovery authorized by the KCC pursuant to the Act must be assessed against all utilities that have customers in Kansas and that receive benefits from the project. Individual assessments will be based on benefits received by the utility from the project. In making its decision regarding benefit and cost allocation, the KCC may consider funding and cost recovery mechanisms developed by regional transmission organizations and is required to consider transmission users' payments approved by the Federal Energy Regulatory Commission or the regional transmission organization.

Curtailment of Consumer Service From Gas Gathering Systems

Finally, the bill requires providers of end-user services from a gas gathering system to give notice to the KCC and to customers at least 30 days prior to curtailment of services, except in the case of an emergency.

In the case of an emergency, service to a residence or to a commercial office may be stopped immediately. Notice in cases of immediate termination of service must be given immediately to the end-user and to the public utility. The company that turned off the gas service is required to report the curtailment within 24 hours to the KCC along with the evidence upon which the company based its good faith belief that immediate curtailment of service was necessary. If the KCC determines a good-faith basis for the curtailment did not exist and the curtailment was unnecessary, the company will be responsible for the cost of the service curtailment, including reconnection and temporary heating costs.

Eminent Domain and Siting of Wind-Powered Generators

Among other provisions, **SB 63** adds a new provision to the statutory definition of "public utility." The bill provides that, for the purpose of taking property through the exercise of eminent domain, the term "public utility" does not include siting or placement of wind-powered electrical generators or turbines including towers.

Property Tax — Exemption for Landfill Gas Property

SB 192 provides a property tax exemption retroactive to tax year 2002 for all personal property actually and regularly used predominantly to collect, refine, or treat landfill gas; all such property used to transport the gas from a landfill to a transmission pipeline; and the gas itself.

Ethyl Alcohol— Labeling Requirement

SB 56 deletes a provision in prior law requiring that every retail pump for motor vehicle fuels be labeled conspicuously to show the content and percent of any ethyl alcohol or other alcohol combined or alone in excess of one percent by volume.

2006

Kansas Petroleum Education and Marketing Act

House Sub. for SB 93 enacts the Kansas Petroleum Education and Marketing Act (KPEMA) and authorizes the establishment of the Kansas Oil and Gas Resources Board. The Board, which is a voluntary private organization with authority to organize as a not-for-profit entity, is not to be deemed in any manner a governmental or quasi-governmental organization. The purpose of the Board is to:

- Coordinate public education regarding the oil and natural gas industry;
- Encourage energy efficiency;
- Promote environmentally sound production;
- Support research and educational activities concerning the industry;
- Promote exploration and production safety;
- Support job training and research activities; and
- Implement and comply with other provisions of KPEMA.

The Board's governing body is composed of 15 trustees appointed by the governing bodies of various qualified producer associations and one representative of non-industry interests. The non-industry representative is appointed by the Board, at the Board's discretion. Trustees serve three-year, staggered terms and are prohibited from receiving salaries for duties performed but may receive reimbursements for travel expenses incurred in association with such duties. The Board is authorized to elect a presiding officer and any other officers deemed necessary and to appoint a director to help carry out the provisions of KPEMA. The Board also is authorized to employ personnel and enter into contracts for research studies or other projects associated with the Act.

The Board is authorized to levy assessments on oil and gas production in an amount up to 0.05 percent of the gross revenue from oil or natural gas produced. For producers who participate in the program, the assessment is deducted from the proceeds paid by the first purchaser to each interest owner. Producers are able to opt out of the assessment program. Interest owners also are entitled to seek refunds of assessments, including interest thereon, within 15 months. All assessments are construed as not constituting a tax or a governmental assessment of any kind. An annual cap of \$20,000 is placed on assessments imposed on a single owner. The Board is specifically prohibited from using funds collected under the assessment provisions for influencing government action or policy, except to recommend amendments to KPEMA.

Kansas Energy Development Act

House Sub. for SB 303 enacts the Kansas Energy Development Act authorizing income tax credits, accelerated depreciation, and property tax exemptions for several types of energy-related projects. Projects for which those tax incentives are created by the Act are oil refineries, crude oil and natural gas liquids pipelines, integrated coal or coke gasification (ICCG) nitrogen fertilizer plants, cellulosic alcohol plants, and integrated coal gasification power plants (ICGPP).

The bill creates the following tax incentives:

- An income tax credit, beginning with the 2006 tax year, for investments in new construction or expansion of an existing entity, if the taxpayer agrees to operate the entity for at least ten years.
 - For all projects except ICCG nitrogen fertilizer plants and pipelines, expansion of an existing plant has to be at least 10 percent of capacity in order to qualify for the tax credit. For ICCG nitrogen fertilizer plants, the minimum qualifying expansion is 20 percent of capacity. Expansion of a pipeline does not qualify for the tax credit.
 - The credit is in an amount equal to the sum of 10 percent of the investment for the first \$250 million invested and 5 percent of the amount of investment over \$250 million.
 - The credit is awarded in ten equal annual installments, beginning with the year the entity or its expanded capacity is placed into service.
 - If an installment amount exceeds the taxpayer's income tax liability for a tax year, the remainder may be carried over for deduction from the taxpayer's income tax liability in the next tax year. The carry-forward provision is authorized for no more than four years, in addition to the ten years for which installment payments are authorized.
 - If the entity (or portion thereof to which the tax credit applies) fails to operate for the required ten-year period, the tax credit is to be paid back.
- A deduction from Kansas adjusted gross income for amortization of the amortizable costs. This amortization will be subject to accelerated depreciation for ten years (55 percent first year, 5 percent for nine years).

- KDFA financing assistance for projects provided with tax incentives under the bill.
- A property tax exemption, (beginning with the purchase or the start of construction or installation) for new equipment and construction or expansion of capacity by at least 10 percent. The property tax exemption for refineries, pipelines, ICCG nitrogen fertilizer plants and cellulosic alcohol plants continues for ten years after the completion of construction or installation. The property tax exemption for ICGPP projects continues for 12 years after completion of the construction or installation. Property purchased for or constructed or installed at an ICGPP in order to comply with federal or state air emission standards also is exempt from property tax from the time of purchase or the beginning of construction or installation and for 12 years after the completion of construction or installation.
- An income tax credit for qualified expenditures made by refineries and certified by the Secretary of Health and Environment as required for an existing refinery to meet federal or state environmental standards established after December 31, 2006. If the amount of the credit exceeds the taxpayer's liability for the year in which the expenditure is made, the remainder of the credit may be carried forward to subsequent years. The bill creates procedures for applying to the Secretary of Health and Environment for the required certification.

Nuclear Generating Facility Security Guard Act

HB 2703 enacts the Nuclear Generating Facility Security Guard Act which, among other things, creates a new crime of trespass on a nuclear generating facility. In addition, the bill provides that armed nuclear security guards are justified in using physical force, up to and including deadly force, under certain circumstances.

The bill defines an "armed nuclear security guard" as a guard working at a nuclear generating facility, who is employed as part of the security plan approved by the Nuclear Regulatory Commission, and who meets the Commission's requirements for carrying a firearm. A guard who meets those requirements may use physical force if the guard reasonably believes that level of force is necessary to prevent or stop the commission of or an attempt to commit criminal damage to property, criminal use of weapons, or criminal trespass on a nuclear generating facility, as those crimes are defined in existing law and by the bill. Those guards also may use physical force, up to and including deadly force, if the guard reasonably believes that level of force is necessary to prevent the commission of manslaughter, first or second degree murder, aggravated assault, kidnapping, aggravated kidnapping, aggravated burglary, arson, aggravated arson, or aggravated robbery. Use of deadly force by a guard also is justified in self defense or to defend another from the use or imminent use of deadly physical force.

An armed nuclear security guard may threaten to use physical or deadly force if necessary in self defense or in order to defend others from the potential use of physical or deadly force.

Neither the guard, the guard's employer, nor the owner of the nuclear generating facility will be civilly liable for the conduct of an armed nuclear security guard whose use of physical or deadly force was justified under the Act.

Armed nuclear security guards may detain any person suspected of or attempting to commit any of the crimes for which the use of physical or deadly force is justified by the Act. The detention must be conducted in a reasonable manner, for a reasonable time, and for the purpose of summoning a law enforcement officer. The reasonable belief that the person detained was attempting to commit one of the enumerated crimes is a defense to a civil or criminal action against the guard for false arrest, false or unlawful imprisonment, or wrongful detention. The defense provided in the Act also accrues to the guard's employer or the owner of the nuclear facility where the guard is employed.

Criminal trespass on a nuclear generating facility is knowingly:

- Entering or remaining unlawfully in or on a nuclear generating facility; or
- Entering or remaining unlawfully within a structure or fenced yard of a nuclear generating facility.

The crime is a severity level 6, person felony.

The bill defines a "nuclear generating facility" as an electric generating facility and the property on which the facility is located that is owned by one or more electric utilities and that uses a nuclear reactor to produce electricity. A "structure or fenced yard" is defined by the bill to be any structure, fenced yard, wall, building, or other similar barrier, or combination of those elements, that surrounds a nuclear generating facility and upon which is posted signs indicating it is a felony to trespass.

Franchise Fees in Newly Annexed Areas

HB 2927 enacts a new statute impacting municipal franchise fees in newly annexed areas. The bill provides that franchise fees imposed by cities on electric and natural gas utilities cannot take effect until 30 days after the city clerk provides the affected utility with a certified copy of the annexation ordinance, proof of publication of the ordinance, and a map of the city detailing the annexed area.

E85 Fuels

SB 544 reduces the motor vehicle fuel tax rate on E85 fuels by \$.07 per gallon effective January 1, 2007, to \$.17 per gallon until July 1, 2020. Beginning July 1, 2020, the tax on E85 fuels shall be not less than \$.11 per gallon or \$.07 below the tax on most other fuels. The bill defines E85 fuels to mean an alternative fuel that is a blend of denatured ethanol and hydrocarbon typically containing 85 percent ethanol by volume, but at a minimum contains 70 percent ethanol by volume, and complies with ASTM specification D5798-99.

The bill also pertains to the tax paid on motor fuel or special fuels by out-of-state importers and ensures these taxes are paid by such individuals.

Energy Conservation Projects—Technical and Community Colleges

HB 2602 amends an existing statute to authorize the board of any community or technical college that implements eligible energy conservation measures to enter into a contract or lease-purchase agreement for those measures for a period of time that may exceed ten years. The amendment contained in the bill gives community and technical colleges the same flexibility for financing energy conservation measures as is currently available to municipalities, school districts, and state agencies under the statute.

The bill also authorizes the Secretary of Administration to provide administrative support and resources under the facility conservation improvement program if requested to do so by school districts or private or public colleges. Under prior law, only municipalities and state agencies were eligible to receive those services.

Gas Safety and Reliability Policy Act

SB 414 enacts the Gas Safety and Reliability Policy Act. Beginning July 1, 2006, a natural gas public utility may petition and propose rate schedules with the KCC to establish or change gas system reliability surcharge (GSRS) rate schedules. These changes allow for the adjustment of rates in order to recover the costs for eligible infrastructure system replacements.

The bill defines an eligible infrastructure system replacement to mean natural gas utility plant projects that:

- Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- Are in service, used, and required to be used; and
- Were not included in the natural gas public utility's rate base in its most recent general rate case.

The "natural gas utility plant projects" are defined under the bill to consist only of the following:

- Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;
- Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and
- Facility relocations required due to construction or improvement of certain public works on behalf of the federal government, the state, a political subdivision of the state, or another entity having the power of eminent domain provided the costs have not been reimbursed to the natural gas utility.

The KCC may not approve a GSRS to the extent it produces a total annualized GSRS revenue below the lesser of \$1,000,000 or ½ percent of the utility's base revenue level or exceeding 10 percent of the base revenue approved by the KCC at the utility's most recent general rate proceeding.

The bill prohibits the KCC from approving a GSRS for a utility that has not had a general rate proceeding decided or dismissed within the past 60 months, unless the utility has filed for one or is the subject of a new proceeding. The bill prohibits a utility from collecting a GSRS for any period exceeding 60 months, unless a filing has been made or is subject to a new proceeding.

The bill also requires the utility which files a petition with the KCC for a GSRS to submit a proposed GSRS and supporting documentation. Staff of the KCC is required to confirm underlying costs and submit a report not later than 60 days after the filing. The bill permits the KCC to hold a hearing and requires that the KCC issue an order not later than 120 days after the filing. The bill prohibits a utility from effectuating a change in its rates more often than once every 12 months.

The KCC is required to determine the appropriate amount of pretax revenue. The bill establishes the factors in determining the appropriate amount of pretax revenue.

The monthly GSRS change is allocated among classes of customers in the same manner as was allocated at the utility's last general rate proceeding. The GSRS is charged to customers as a monthly fixed charge and not based on volumetric consumption. The monthly charge cannot increase more than \$.40 per residential customer per year.

Nothing in the bill is to be construed to limit the authority of the KCC to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding.

Biodiesel Fuel Producer Production Incentive

SB 388 establishes a biodiesel fuel producer production incentive in the amount of \$.30 for each gallon of biodiesel fuel sold by a Kansas qualified biodiesel fuel producer, as defined by the bill. The incentive will be payable to a producer from the Kansas Qualified Biodiesel Fuel Producer Incentive Fund (Incentive Fund), as created by the bill.

The bill requires the Director of Accounts and Reports to transfer \$437,500 on April 1, 2007, from the State Economic Development Initiatives Fund (EDIF) to the Incentive Fund. On July 1, 2007, and every quarter thereafter, the Director of Accounts and Reports is to transfer \$875,000 from the EDIF to the Incentive Fund. The Secretary of Revenue will make the payments to the producers upon a filing by the producers of a form furnished by the Department of Revenue. Moneys remaining in the Fund upon expiration of the Act are to be credited by the State Treasurer to the EDIF. In the event funds from the EDIF are insufficient, then funds will be transferred from the State General Fund.

The bill authorizes the Secretary of Revenue to adopt rules and regulations necessary to administer the provisions of the bill. Those rules and regulations will include the development of a procedure for the payment of the production incentive on a prorated basis.

Finally, the incentive program will sunset on July 1, 2016.

2007

State Purchase and Lease of E85 Vehicles

SB 262 requires state agencies, when purchasing a motor vehicle, to purchase a motor vehicle that utilizes E85 fuel, unless the manufacturer of the vehicle model to be purchased does not offer the model with an engine that utilizes E85 fuels or the cost of the vehicle is \$250 or more than the cost of the vehicle model that does not utilize E85. This provision does not apply to the purchase of diesel-fueled vehicles, vehicles purchased in conformity with federal requirements, or vehicles purchased for the Kansas Highway Patrol. With the approval of the head of the state agency, a state agency may purchase a motor vehicle which utilizes E85 fuels even though the cost is \$250 or more than the cost of a vehicle that does not utilize E85.

The bill also requires that when a state agency leases a motor vehicle, it should lease one that utilizes E85 fuels, unless no suitable vehicle that utilizes E85 fuels is available.

Gas Gathering Services

Sub. for SB 325 amends two sections and adds a new statute relating to gas gathering systems and those persons who are maintaining or acquiring an exit tap on a gathering system.

Specifically, the bill allows the KCC, upon complaint by a party who has or seeks an exit tap on a natural gas gathering system, to review disputes over access, service, or abandonment.

For reasons other than health or safety, the KCC may review disputes regarding:

- Exit taps provided pursuant to right-of-way agreements between landowners and gas gathering system owners or operators; and
- Exit taps provided on or before the effective date of this Act, directly to an end user or to a public utility.

In addition, the bill permits the KCC to review disputes for reasons other than health or safety for exit taps requested to serve a non-profit utility that provides natural gas service exclusively for agricultural activity, but not including any domestic use.

Before filing a complaint with the KCC, the existing or proposed exit tap customer shall meet the following requirements:

- Customers must have acquired or be able to acquire a supply of natural gas with access to the gas gathering system;
- Customers must meet the same financial requirements and guarantees as all other shippers on the gathering system, including credit worthiness; and

- Customers must be prepared to pay all costs and any associated expenses for the exit tap installation and service as imposed by the provider.

After review, the KCC may order exit tap service be provided and may determine if rates and charges for the service are reasonable and non-discriminatory when compared to rates for similar service on the same gas gathering system.

Service will not be required, unless the KCC finds all of the following:

- The service will not impair the ability of the gas gathering system to meet all existing and anticipated demand on the system;
- The provision of the service will not require installation, relocation, or modification of compression or other operations and equipment or features;
- The charges for the service are adequate to cover the provider's administrative and operating expenses for the exit tap service, the cost of installing the exit tap, and a reasonable profit margin considering the risks;
- The service will be provided on an interrupted basis and the provider will be indemnified by the exit tap customer from liability for damages to human life, crops, livestock, equipment, environmental, or any other damage arising from the use, interruption of service, or curtailment of the service;
- The customer has agreed the service may be terminated for failure to pay bills promptly and maintain credit worthiness;
- The customer has agreed the service may be terminated at any time if continued service threatens the operational stability and reliability of the provider's system or if service cannot be continued to be safely provided;
- The service will not impair or modify existing contracts held by the gas gathering system owner or operator;
- The service will not unreasonably increase the total number of exit taps;
- The service can be provided in a safe and environmentally sound manner; and
- The provision of service will not adversely affect service or cost to any other gas gathering service customers on the system.

Further, the bill provides that when addressing any complaint, the KCC may not review the terms, including the price and volume of the gas, of any purchase agreement for acquisition of natural gas by the exit tap customer; can not order any producer, gatherer, or other party to sell natural gas to the customer or proposed customer; and may not require the provision of a new exit tap on any gathering system which has not provided at least one exit tap prior to the effective date of the bill.

Finally, the bill modifies the definition of “gas gathering system” to include transportation to a main transmission line or to any exit tap on a gas gathering system. Further clarification is added to this definition to state that existing, new, or additional exit taps added to a gathering system will not cause a gathering system to be regulated as a public utility. A new definition of “exit tap on a gas gathering system” is defined to mean the point on a gas gathering system at which natural gas is delivered to a consumer, homeowner, business, agricultural user, person, gas marketer, or public utility. The terms “agricultural activity,” “confined feeding facility,” and “feedlot” also are defined.

State Energy Plan—Modifications and New Requirements

SB 326 amends a portion of law that requires the KCC to develop a state energy plan in accordance with federal requirements.

The bill does the following:

- Requires the KCC to prepare an emergency management plan (energy allocation and curtailment of energy consumption) for natural gas and electric energy to be adopted during activation of Emergency Support Function 12 of the Kansas Response Plan;
- Removes requirements for the KCC to collect and compile data on energy resources, monitor energy resources supplies in the state, cooperate in the implementation of any energy rationing program, prepare annual reports describing energy emergency management programs, and enter into certain contracts for implementing the provisions of this section of the law:
- Modifies statutory language regarding the Governor’s ability to declare an energy emergency by recognizing the law enacting the Kansas Response Plan, but continues to allow the Governor to declare a state of disaster emergency exists when the supply of natural gas and electricity is inadequate; and
- Modifies the requirement that the KCC adopt rules and regulations establishing allocation of natural gas and electric energy or the curtailment of consumption during an activation of Emergency Support Function 12 of the Kansas Response Plan.

Fuel Blending—Exception for Consumer Use

HB 2013 amends a section of law dealing with the requirements for motor vehicle fuels and special fuel manufacturer’s licenses to clarify that no motor vehicle fuels or special fuel manufacturer’s license is required for any consumer who is blending motor vehicle fuel or special fuel purchased for the consumer’s own use, and not for resale, from a distributor or retailer who is the holder of a valid, unsuspended, and unrevoked motor vehicle fuels or special fuels distributor’s or retailer’s license.

Municipal Utilities–Exemption from KCC Regulation

HB 2032 (See **HB 2597** below).

Utility Construction Work in Progress

HB 2033 requires the KCC to include certain property not placed in service in a utility's value for rate making purposes. Under the bill, the KCC may, on its own initiative or as part of a utility rate proceeding, review whether a public utility's expenditures for property were efficiently and prudently incurred.

The bill also repealed the KCC's discretionary authority to consider construction costs of permitted nuclear generation facilities for rate-making purposes. In addition, the bill allows costs of construction work in progress for all property related to an electrical generation facility producing energy from renewable sources to be included in the utility's value for rate-making purposes.

Utility Security Costs

HB 2034 extended, until July 1, 2011, the law authorizing the KCC to allow electric and gas utilities to recover from their customers the cost of prudent expenditures for security measures. Prior to enactment of the bill, the statute would have expired on July 1, 2007.

Scrap Metal Regulation

Senate Sub. for Sub. for HB 2035 enacts new law to regulate scrap metal dealers. The major provisions include:

- Limiting the law to apply solely to scrap metal dealers who operate from a fixed location and deal in “regulated scrap metal.” Regulated scrap metal is defined to include:
 - Wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, pipes, connectors made from aluminum, catalytic converters containing platinum, palladium, or rhodium; and
 - Any form of copper, titanium, tungsten, and nickel; the purchase price of which was primarily based on the content of those named metals.
- Requiring persons who are not scrap metal dealers and who are not known to the purchasing dealer to be an established business that generates regulated scrap metal, to present to the dealer at the time of certain sales of scrap metal the seller's name, address, and place of business, if any. The information must be provided for sales of regulated scrap metal for over \$50.00, unless the scrap metal is a catalytic converter, for which the threshold is \$30.00. The seller is required to present to the dealer, at the time of sale, government-issued photo identification.

- Scrap metal dealers are required to maintain records including the name, residence, or place of business of the seller, a description of the items purchased, the price paid for the items, and a copy of the seller's photo identification card. The records may be maintained electronically.
- Establishing conditions under which it is legal for scrap metal dealers to purchase regulated scrap metal. The dealer is required to:
 - Obtain the required identification information; and
 - Maintain the required transaction records and make hard copy of electronic records available to law enforcement officials.
- Making an intentional violation of these provisions a Class A misdemeanor. (Class A misdemeanors are subject to a maximum one year jail term and a maximum \$2,500 fine or an alternative fine that does not exceed double the monetary gain from the crime.)

Energy Efficiency of Buildings

HB 2036 amends two statutes regarding energy efficiency of certain commercial, industrial, and residential buildings. In regard to commercial and industrial buildings, the bill replaces the 2003 International Energy Conservation Code with the 2006 version of that code as the energy efficiency standard for new buildings.

In regard to residential structures, the bill amends prior law to limit the requirement for disclosure of energy efficiency information to single family units and multifamily units of four or fewer units. In addition, the statute is amended to require disclosure of energy efficiency information to the buyer or prospective buyer prior to the signing of the contract to purchase and prior to closing if changes have occurred or are requested, and at any other time, upon request. For new residential structures completed and suitable for occupancy but unsold, the bill requires the builder or seller to provide the completed disclosure form to the buyer or prospective buyer when the residence is shown and at any time upon request. Finally, the bill creates a new residential energy efficiency disclosure form that enables comparison of the residence being purchased with the 2006 International Residential Code/International Energy Conservation Code (IRC/IECC) standard for the two climate zones within the state. The new form also allows the builder to provide additional information.

Nuclear Generation Facilities; Biofuels Equipment; Renewable Electric Cogeneration Facilities

HB 2038 creates: a property tax exemption for certain new nuclear generation facilities and exempts those facilities from various siting requirements; income tax incentives for qualified investments in fuel storage and blending equipment used for biofuels; and tax incentives for renewable electric cogeneration facilities and certain waste heat utilization systems.

Nuclear Generation Facilities

The bill creates a property tax exemption and a payment-in-lieu-of-taxes (PILOT) requirement, beginning with the 2007 tax year, for certain new nuclear generation facilities in Kansas. New facilities to which the exemption applies must be within three miles of a nuclear facility in existence on January 1, 2007. The bill also exempts from statutory siting requirements the addition of nuclear generating capacity to a nuclear facility within three miles of an existing nuclear facility. The property tax exemption applies from the time of purchase or start of construction and continues for ten years after completion of the new facility. The property tax exemption applies only to projects begun after December 31, 2006. The bill requires the owners of new property eligible for the exemption to pay to the appropriate taxing subdivisions a PILOT equal to the amount that would have been levied upon the real portion of such property for the duration of the exemption created by the bill.

Biofuels Equipment Tax Incentives

The bill creates income tax incentives for investment in fuel storage and blending equipment used for biofuels. Biofuels are defined by the bill to mean fuels made from organic matter, including organic waste, but excluding fuels made from oil, natural gas, coal or lignite, or products of those substances.

An income tax credit is available for tax years 2007 through 2011 for investment in the purchase, construction, or installation of equipment used for storing and blending petroleum-based fuel and biodiesel, ethanol, or other biofuel and installed at a fuel terminal, refinery, or biofuel production plant. The tax credit is not available for equipment used only to denature ethyl alcohol.

The tax credit is equal to 10 percent of the taxpayer's qualified investment for the first \$10 million invested and 5 percent of the investment in excess of \$10 million. The credit may be taken in ten equal annual installments, beginning with the year the equipment is placed into service. Any excess credit may be carried over for deduction from the taxpayer's income tax liability in subsequent years for a maximum of 14 years after the first installment. The bill provides for making the income tax credits available to pass-through entities and co-owners of storage and blending equipment.

In order to be eligible for the tax credit, the taxpayer will be required to enter into an agreement with the Secretary of Commerce, requiring the taxpayer to continue to operate the equipment for at least ten years during the term of the tax credit, among other things. The Secretary of Commerce annually determines whether the taxpayer is in compliance with the agreement. The Secretary of Commerce is authorized to adopt rules and regulations to administer the provisions regarding the taxpayer agreements.

The bill also provides for an income tax deduction based on accelerated depreciation for storage and blending equipment. This income tax deduction extends over a ten-year period and equals 55 percent the first year and 5 percent for each of the nine subsequent years. The deduction will be available beginning in tax year 2007. The Secretary of Revenue is authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

Renewable Electric Cogeneration and Waste Heat Utilization Tax Incentives

Other provisions of the bill create tax incentives for investment in new renewable electric cogeneration facilities and waste heat utilization systems at electric generation facilities. The bill authorizes the KDFA to assist in financing those facilities. Finally, the bill amends certain existing incentives for investment in alcohol fuels production facilities to include a broader range of input materials and fuel products.

Renewable electric cogeneration. Facilities eligible for the tax incentives and KDFA financing under the bill include those built after December 31, 2006, and located in Kansas that generate electricity from renewable energy resources or technologies for use in an industrial, commercial, or agricultural process. The cogeneration facility and the process consuming the electricity must be owned by the same entity. The bill creates an income tax credit for tax years 2007 through 2011 for investments in the construction of the cogeneration facility and in real and tangible personal property used in the facility.

In order to be eligible for the tax credit, the taxpayer must enter into an agreement with the Secretary of Commerce, requiring, among other things, that the taxpayer maintain operation of the cogeneration facility for at least ten years during the term of the tax credit. The Secretary of Commerce annually determines whether the taxpayer is in compliance with the agreement. The Secretary of Commerce is authorized to adopt rules and regulations to administer the provisions regarding the taxpayer agreements.

The tax credit is equal to 10 percent of the taxpayer's qualified investment for the first \$50 million invested and 5 percent of the investment in excess of \$50 million. The credit will be taken in ten equal annual installments beginning with the year the facility is placed into service. Any excess credit may be carried over for deduction from the taxpayer's income tax liability in subsequent years for a maximum of 14 taxable years after the first installment. The bill makes the credits available to any pass-through entities and co-owners of the cogeneration facility.

The bill also provides for an income tax deduction based on accelerated depreciation for a cogeneration facility. This income tax deduction extends over a ten-year period and equals 55 percent the first year and 5 percent for each of the nine subsequent years. The deduction is available beginning in tax year 2007. The Secretary of Revenue is authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

The bill authorizes the KDFA to issue tax-exempt revenue bonds to finance construction of cogeneration facilities. The bonds will be repaid from revenues of the facilities and do not constitute state debt.

Waste heat utilization systems. Certain waste heat utilization systems are eligible for a property tax exemption, beginning with tax year 2007. The exemption is for the ten-year period after the facility is completed. Waste heat utilization facilities are defined to facilities and equipment used to recover waste heat created during electricity generation and that use that heat to generate additional electricity or to produce fuels from renewable energy resources.

The bill also provides an income tax deduction based on accelerated depreciation for waste heat utilization systems in Kansas. This income tax deduction extends over a ten year period and is equal to 55 percent the first year and 5 percent for each of the nine subsequent

years. The deduction is available beginning in tax year 2007. The Secretary of Revenue is authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

The bill authorizes the KDFA to issue tax-exempt revenue bonds to finance construction of waste heat utilization systems at electric generation facilities in the state. The bonds will be repaid from revenues of the facilities and do not constitute state debt.

Biomass-to-energy. Tax credits and incentives available to cellulosic alcohol production plants are expanded by the bill to include other forms of biomass-to-energy plants. Biomass is defined to include any organic matter available on a renewable or recurring basis, including solid and liquid organic waste, but excluding petroleum oil, natural gas, coal, and lignite, and any products of those substances; and corn or grain sorghum suitable for human consumption.

“Biomass-to-energy plant” is defined to mean an industrial process plant located in Kansas that annually produces:

- At least 500,000 gallons of cellulosic alcohol;
- Liquid or gaseous fuel or energy in a quantity having a BTU value equal to or greater than 500,000 gallons of cellulosic alcohol; or
- Oil produced for direct conversion into fuel in a quantity having a BTU value equal to or greater than 500,000 gallons of cellulosic alcohol.

The law was extended by the bill to biomass-to-energy plants and provides:

- Eligibility for KDFA financing assistance;
- A ten-year property tax exemption;
- An investment tax credit of 10 percent of the first \$250 million invested and 5 percent of the amount over \$250 million. Prior law also was amended to make those tax credits available until the end of tax year 2010; and
- Accelerated depreciation over ten years (55 percent the first year and 5 percent for the succeeding nine years).

Existing law also was amended by the bill to make income tax credits created in 2006 for investment in a new or expanded oil refinery, certain pipelines, integrated coal gasification power plants, or integrated coal or coke gasification nitrogen fertilizer production facilities, available only until the end of tax year 2010.

Renewable Energy

HB 2039 amends the definition of renewable energy in several statutes by deleting the word “thermal” from the definition of renewable resources or technologies.

Petroleum Meter Inspection; Parallel Wind Generation Projects; Retail Biofuels Incentives; Above Ground Storage Tanks

Senate Sub. for HB 2145 amends existing law and enacts new law addressing inspection of petroleum meters on vehicle tanks, wind generation projects at two community colleges, parallel generation of electricity from renewable resources, incentives for retailers of alternative motor fuels and biodiesel, and training for operators of above ground storage tanks. Major provisions of the bill are described below.

Inspection of Petroleum Meters on Vehicle Tanks – Amendments

The bill amends the definition of a “dispensing device” to allow petroleum inspection fee funds to be used for inspecting and testing meters on vehicle tanks. In addition, the bill authorizes the Secretary of Agriculture to reduce the fees and charges imposed upon manufacturers, importers, exporters, or distributors first selling, offering for sale, using, or delivering gasoline or diesel, including government sales, when the Secretary of Agriculture determines that the fees and charges being paid are yielding more revenue than required to administer the Petroleum Inspection Program.

Wind Generation Education Projects at Community Colleges

In addition, the bill authorizes Cloud County and Dodge City community colleges each to establish a wind generation education pilot project. Prior to instituting generation project that will result in sale of energy on the electric grid, each college must make a finding that:

- Net energy cost savings will accrue from renewable generation over a 20-year period; or
- Renewable generation is a science project being conducted for educational purposes and that the project may not recoup the expenses of the project through cost savings.

The community colleges are permitted to contract or enter into a finance, pledge, loan, or lease-purchase agreement with the KDFA as a means of financing the cost of a renewable generation project. KDFA is permitted to finance the construction and installation of a renewable generator by either school for parallel generation through the issuance of revenue bonds.

Parallel Generation from Renewable Resources – Amendments

In regard to commercial customers participating in parallel generation other than Cloud County and Dodge City community colleges, the bill amends existing law to increase from 100 kilowatts to 200 kilowatts the maximum allowable generation capacity for parallel generation from renewable resources. The community colleges are treated as parallel generators as long as their renewable generation capacity is 1.5 megawatts or less. A generator used by a commercial customer for parallel generation must be appropriately sized for the customer’s

anticipated electrical load. The bill limits commercial customers who power irrigation pumps with renewable energy generators to connecting a maximum of ten pumps to a utility's system. The parallel generator must attach the mechanism necessary to feed excess electrical power onto the utility's system on the customer's side of the retail electric meter. Utilities are required to provide a written estimate of costs expected to be incurred by the utility and billed to a parallel generator when a customer notifies the utility of intent to construct and install parallel generation capacity. The bill limits the number and size of renewable generators that can connect to the utility's system. Utilities are not required to purchase from a parallel generator more than 4 percent of the utility's peak power requirement. The KCC shall establish terms and conditions of parallel generation contracts if the renewable generator and the utility cannot agree on contract terms.

The bill provides that the amount of compensation for energy supplied to a utility by the community colleges will be 100 percent of the utility's monthly system average cost of energy per kilowatt hour. In the case of renewable generation with a capacity of 200 kilowatts or less, the compensation remains at the current level of at least 150 percent of the utility's monthly system average cost of energy per kilowatt hour.

The bill provides that electricity generated by parallel generators will be included as part of the state's generation of electricity by wind for purposes of meeting the Governor's goals. Those goals are production of 10 percent of the state's electricity by wind by 2010 and 20 percent by 2020.

Motor Fuel Dealers – Incentive for Selling Renewable Fuels

The bill creates a monetary incentive for licensed retail motor fuel dealers selling renewable fuels and for licensed retail dealers of biodiesel beginning in 2009 and ending in 2026. "Biodiesel" is defined by the bill to mean a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from vegetable oils or animal fats and that meets the specifications adopted by rules and regulations of the Secretary of Agriculture pursuant to existing law. The specification must meet American Society for Testing and Materials Specification D6751-07 for biodiesel fuel (B100) blend stock for distillate fuels but may be more stringent regarding biodiesel quality and usability. Renewable fuels are defined by the bill to be combustible liquids either derived from grain starch, oil seed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized, decaying, organic matter that is capable of powering spark-ignition machinery.

A maximum \$400,000 will be transferred quarterly from the State General Fund to the Kansas Retail Dealer Incentive Fund (Fund), created by the bill, from which the incentive payments will be made. The Fund balance is capped at \$1.5 million. If the balance in the Fund exceeds \$1.1 million at the time of a quarterly transfer, the transfer will be limited to the amount necessary for the Fund to reach \$1.5 million. The Secretary of Revenue is authorized to prorate the incentive payments, if the amount in the Fund is insufficient to pay all incentives claimed.

For any quarter in which a retail dealer sells renewable fuels from a fixed location, the retail dealer will be eligible for an incentive of \$0.065 per gallon of renewable fuels sold if the required threshold percentage is met. The threshold percentage for the incentive payment for renewable fuel sold will be 10 percent in the calendar year 2009 and gradually increase to 25 percent beginning on January 1, 2024. If in any quarter the retailer fails to meet the threshold

percentage by 2 percent or less, the payment will be \$0.045. No incentive payment will be made if the retailer fails to meet the threshold percentage by more than two percent.

The bill also establishes an incentive payment of \$0.03 per gallon of biodiesel sold by a retail dealer. The threshold percentage for the incentive payment for the sale of biodiesel is 2 percent in calendar year 2009 and gradually increases to 25 percent in calendar year 2025. No payment will be made if there is a percentage disparity in sales of biodiesel.

The Secretary of Revenue is authorized to adopt rules and regulations necessary to administer the Act. The Secretary also is required to annually submit a written report to the House Appropriations Committee, the House Energy and Utilities Committee, the Senate Ways and Means Committee, and the Senate Agriculture Committee, beginning with the 2010 Legislative Session. The report must contain information regarding incentive payments claimed and amounts of renewable fuels and biodiesel sold in the state, including any recommendation for statutory changes.

Alternative-Fuel Fueling Stations—Amendments

Existing law regarding incentives for alternative-fuel fueling stations is amended to permit those stations placed in service on or after January 1, 2009, to be eligible for an income tax credit equal to 40 percent of the total amount expended, not to exceed \$100,000 for each fueling station. The tax credit may be carried forward for four years after the taxable year in which the expenditure was made.

In addition, the definition of “alternative fuel” is amended to clarify the types of fuels included in the definition. The definition of “biodiesel” is amended to make it consistent with the definition in other provisions of the Act.

Reimbursement of Above Ground Storage Tank Operators

The bill extends the deadline for application for reimbursement of owners of above ground storage tank facilities or bulk plants for costs incurred in upgrading a facility or for closure expenses from January 1, 2009, to January 1, 2011.

KDFA Financing for Energy Conservation Projects—Federal Agencies

HB 2169 enacts a new law authorizing the KDFA to issue revenue bonds to pay for energy conservation measures for or on the behalf of state agencies, subdivisions of the state, and federal entities with facilities in Kansas. Bonds and interest are payable from revenue derived from the use, lease, occupation or operation of the facilities and other moneys available to the state, local, or federal entity. Bonds authorized by the Act will not be obligations of the state and will not constitute indebtedness of the state. The bonds issued pursuant to the Act will be exempted from state and local taxes, except Kansas estate tax.

The bill transfers authority for the Facility Conservation Improvement Program from the Department of Administration to the KCC. The bill also removes the \$5,000,000 per fiscal year cap on energy conservation improvements for state facilities and authorizes the KCC to approve the amounts necessary for energy conservation improvements.

Electric Transmission Related Charges

HB 2220 amends prior law regarding transmission charges for retail electric service. The bill authorizes two procedures for approval of transmission-related charges by the KCC. The bill also authorizes approval of transmission charges that result from “interim” federal transmission cost orders.

Transmission charges may be determined by the KCC in response to a general retail rate application or as part of a full rate case. Under prior law, as interpreted by Kansas courts, transmission delivery charges could not be determined during a rate case.

In regard to transmission charges resulting from federal orders, the bill authorizes the KCC to order changes to a utility’s transmission charge if a federal transmission rate order changes. Under prior law, utilities had discretion regarding changing their transmission delivery charges when a federal transmission rate order was changed.

Sales Tax Exemption for Repair Services

HB 2240 extends in two ways the existing sales tax exemption for repair services to certain facilities damaged by natural or man-made disasters. First, the exemption is expanded to include repairs necessitated by windstorms, ice loading, attendant winds, and terrorism to buildings or facilities, including electric distribution and transmission lines, of cooperatives and municipal and quasi-municipal corporations. Under prior law, the sales tax exemption applied to services necessary to repair those buildings and facilities damaged by fire, flood, tornado, lightning, explosion, or earthquake.

Second, for electric transmission and distribution lines owned by an independent transmission company or cooperative, KETA, or a natural gas or electric public utility, the sales tax exemption applies to services to repair damage caused by fire, flood, tornado, lightning, explosion, earthquake, windstorm, ice loading, attendant wind, or terrorism.

The bill defines “windstorm” as straight line winds of at least 80 miles per hour. The wind speed must be determined by a recognized meteorological reporting agency or organization.

Energy Conservation Measures—Financing by Utilities

Sub. for HB 2278 authorizes electric and natural gas utilities to enter into agreements with utility customers and their landlords, whereby the utility will finance the purchase and installation of energy conservation measures. Customers who participate in the program will pay for the financing and other costs through their monthly utility bills. The amount included in utility bills for that purpose must be approved by the KCC.

Under the bill, a utility’s liability for the energy conservation measures will be limited to that required by the KCC. Further, utilities will be prohibited from providing certain warranties regarding measures. The bill does not limit rights or remedies of utility customers and their landlords against other parties to a transaction involving the purchase and installation of energy conservation measures.

Kansas Electric Transmission Authority Act—Amendments

HB 2306 amends the Kansas Electric Transmission Authority Act to enable KETA to conduct its day-to-day business without the necessity of providing notice and waiting for responses as is required for planing, financing, constructing, and owning transmission facilities. Notification and response time lines established in prior law that apply to the planning, financing, constructing, and owning transmission facilities are unchanged by the bill.

Carbon Dioxide Reduction Act

HB 2419 creates the Carbon Dioxide Reduction Act to provide tax incentives for the sequestration of carbon dioxide through underground storage. The Act also provides for KCC regulation of underground carbon dioxide facilities.

The bill creates tax incentives by exempting from property tax any carbon dioxide capture, sequestration, and utilization property and any electric generation unit which captures and sequesters all carbon dioxide and other emissions. The property tax exemption is available beginning with tax year 2008. The exemption for a particular facility is available from the time of purchase or the start of construction or installation and for five taxable years following completion of construction or installation of the property. Carbon dioxide capture, sequestration, or utilization property is defined as the machinery and equipment used to capture human made carbon dioxide or to convert carbon dioxide into one or more products; carbon dioxide injection wells; and machinery and equipment used to recover carbon dioxide from sequestration.

The bill also provides for accelerated depreciation of carbon dioxide capture, sequestration, or utilization machinery and equipment. That equipment, located in Kansas, may be depreciated for income tax purposes over a ten-year period (55 percent the first year and 5 percent each of the subsequent nine years). The accelerated depreciation is available beginning with tax year 2008.

The Act makes the KCC responsible for regulating underground carbon dioxide sequestration. By July 1, 2008, the KCC must establish rules and regulations providing for the safe and secure injection and maintenance of underground storage of carbon dioxide. The administrative penalty for violation of the regulatory provisions of the Act is a maximum of \$10,000 per violation per day. In addition, the KCC is authorized to adopt rules and regulations establishing fees for permitting, monitoring and inspecting carbon dioxide injector wells and underground storage facilities. Fees collected by the KCC pursuant to the bill will be remitted to the Carbon Dioxide and Underground Storage Fund, created by the bill.

Oil and Gas Well Intent to Drill Fees;

Kansas Petroleum Education and Marketing Act Amendments

Senate Sub. for HB 2485 authorizes the KCC to adopt rules and regulations to fix, charge, and collect a maximum \$300 fee for an application of intent to drill an oil or gas well. In addition, the bill clarifies that the KCC must make available information regarding intents to drill to the Secretary of the Kansas Department of Health and Environment (KDHE) and to county clerks. Prior law required the KCC to send copies of intents to drill to KDHE and to county clerks.

In addition, the bill amends the Kansas Petroleum Education and Marketing Act to modify the definition of the term “interest owner” to exclude any overriding interest carved out of the working interest. The bill also repeals the annual cap of \$20,000 for the voluntary assessment of each interest owner and provisions that allow interest owners to opt out of the assessment. (The prior provision permitting interest owners to seek a refund remains in effect.) Further, assessments are due by the 60th day, rather than the 15th, following the end of the month in which the assessment is collected. In addition, the bill allows those individuals who request less than a full refund of all assessments to serve on the Kansas Oil and Gas Resources Board. Prior law prevented persons requesting any refund to serve on the Board. Finally, the bill authorizes the Board to permit or require an entity other than the first purchaser to deduct the assessment if the entity is the operator or if the entity distributes revenue to interest owners.

Mercury Deposition Monitoring

HB 2526 requires the Secretary of the Kansas Department of Health and Environment to establish a statewide network to measure mercury deposition. The network must consist of at least six sites where samples and related data are collected. At least two of the sites must be positioned to measure deposition of mercury from the direction of prevailing winds.

The Secretary is required to contract with a laboratory to analyze the samples and provide reports. After the samples are analyzed, data and analysis reports, including data on long term trends, must be provided to the public through a website and *via* a national database designated by the Secretary. In addition, the Secretary is required to provide data and analysis specifically to Kansas-based research institutes and scientists for exploration of the impact of mercury on plants, people, and animals in Kansas. Starting with the 2009 Legislative Session, the Secretary is required annually to submit summary monitoring reports to the Governor and to the leadership of the House and Senate Committees that consider issues related to utilities, natural resources, and the environment.

Municipal Utilities—Exemption from KCC Regulation

HB 2597 enacts new law and amends prior law regarding municipal utilities and the extent to which those utilities are regulated by the KCC.

The bill exempts municipal natural gas and electric utilities from KCC regulation for those services provided more than three miles from the municipality’s boundary under certain circumstances. The exemption from KCC jurisdiction applies if:

- The number of customers served in the outlying area constitutes 40 percent or less of the utility’s total customers;
- Rates and charges are no greater than, and terms and conditions of service are the same, for customers in the outlying area as for customers inside the municipality. Rates and charges for customers in the outlying area may be increased a maximum of 10 percent per year until they are equal to those for customers inside the municipality;

- Outlying customers are provided with notice a minimum of ten days before any meeting at which changes to rates and charges will be considered. Contents of the notice, including a statement of the right to petition, are specified in the bill;
- The municipality furnishes, within 21 days of a request, the names, addresses, and rate classifications of customers in the outlying area; and
- The municipality provides to the KCC an annual report stating the number of customers served in the outlying area and the total number of customers served by the utility as of the end of the prior calendar year. The annual report must be filed with the KCC by May 1.

The bill creates a procedure by which customers in an outlying area may protest a change in rates, charges, or terms and conditions of service.

The bill specifically states the new municipal utility provisions will not be construed to affect the single certified service territory of the municipal utility or the authority of the KCC over the municipal utility as provided for in existing law.

2008

Distribution of Certain Oil and Gas Lease Moneys

SB 424 amends existing law regarding payments made after the sale of an oil or gas lease where an owner cannot be found. The bill requires future production proceeds or benefits paid under the oil and gas lease be retained by the oil and gas purchasing company. The oil and gas purchasing company is required to hold the funds until ordered by the Court to distribute the funds or required to be distributed under the Uniform Unclaimed Property Act.

Kansas Electric Transmission Authority (KETA)

SB 614 amends existing law regarding notification required to be provided by KETA regarding facilities or services contemplated by KETA. The bill clarifies that the 90-day time period for private entities to respond to a notification from KETA begins when that notice is published in the *Kansas Register*.

Kansas Storage Tank Act

Senate Sub. for HB 2634 creates two new statutes as part of the Kansas Storage Tank Act. On or before July 1, 2009, the State Fire Marshal must conduct an on-site inspection of any facility in existence on the effective date of the Act to determine compliance with standards contained in a specified National Fire Association pamphlet and rules and regulations adopted by the State Fire Marshal. If the facility is in compliance, a re-inspection is required at least once every three years. If a facility is not in compliance, any necessary changes must be made as soon as practicable but no later than July 1, 2012.

The bill requires any facility constructed after the effective date of the Act to meet standards established by the bill and applicable rules and regulations adopted by the State Fire Marshal.

Studies Regarding Nuclear Industrial Development

HB 2681 repeals KSA 48-1604, a requirement for designated agencies to study the need for changes in state law or rules and regulations of the KDHE arising from the presence in Kansas of nuclear materials and facilities. The statute also authorized the Governor to direct any agency to conduct such a study.

Abandoned Oil and Gas Well Fund—Extension

HB 2735 extends the sunset date from July 1, 2009, to July 1, 2016, for the Abandoned Oil and Gas Well Fund to receive quarterly transfers of \$100,000 from each of the State General Fund, the State Water Plan Fund, and the Conservation Fee Fund.

Crude Oil Storage and Advisory Committee on Regulation of Oil and Gas Activities

HB 2892 requires the Secretary of Health and Environment to adopt rules and regulations governing underground crude oil storage not later than January 1, 2009. The Secretary shall appoint an advisory committee consisting of five members knowledgeable in areas related to crude oil storage.

In addition, the bill expands the membership of the Advisory Committee on Regulation of Oil and Gas Activities from ten members to 12. One of the new members is appointed jointly by the Kansas Farm Bureau and the Kansas Livestock Association and be an owner of a surface interest. The other new member is appointed jointly by the Southwest Kansas Royalty Owners Association and the Eastern Kansas Royalty Owners Association and be an owner of a mineral interest.

Nuclear Generation Facilities Joint Committee on Energy and Environmental Policy

SB 586 enacts new law authorizing electric utilities to recover certain costs related to planning for new nuclear generation capacity and regarding depreciation of nuclear facilities. Existing law is amended regarding rate recovery of certain nuclear facility construction costs. In addition, the bill creates the Joint Committee on Energy and Environmental Policy. Specific provisions of the bill are described below.

Nuclear Power Generation

The bill requires the KCC to authorize an adjustment to an electric utility's rates to recover the utility's prudent expenditures for development costs for a new nuclear generation

facility, subject to review by the KCC. These development costs include preliminary engineering, study, feasibility, prepayments for major equipment, and permitting. Electric public utilities may apply for and request from the KCC a predetermination of rate-making principles that will apply to the utility's rates to recover these development costs.

The bill allows an electric utility that receives a license to operate a nuclear generation facility on or after July 1, 2008, to use a book depreciable remaining life of not more than the amount of time remaining on the facility's operating license. In addition, the bill allows the costs of construction for a nuclear generation facility to be included in the customer rate base before the facility is operational.

Joint Committee on Energy and Environmental Policy

The bill establishes the Joint Committee on Energy and Environmental Policy, an 11-member bipartisan committee. The committee will be composed of six members of the House of Representatives, appointed by the Speaker of the House and the House Minority Leader, and five members of the Senate, appointed by the President and the Senate Minority Leader. The political parties have proportional representation on the Committee. Members of the committee serve two-year terms, except that the term of the initial members appointed on or after November 10, 2008, will end on the first day of the regular 2009 Legislative Session.

Beginning in 2009, the chairperson will serve for a biennium. Appointment authority for the chairperson will alternate between the House of Representatives and the Senate. The initial chairperson, and the chairperson for the biennium beginning in 2009, will be a Senator.

The Committee may meet at any time and place within the state on the call of the chairperson. Members will receive compensation, travel expenses, and subsistence expenses for attendance at Committee meetings.

The Committee may introduce legislation and shall submit a report to the Legislature and to standing committees assigned to utility, energy, environment and natural resources issues, before December 31 each year, with any findings it deems necessary concerning energy and environmental policy.

2009

Revisions to Economic Revitalization and Reinvestment Act

SB 108 revises the Economic Revitalization and Reinvestment Act by expanding the definition of an eligible aviation business and by allowing wind or solar energy manufacturing businesses to qualify for benefits.

Eligible Wind or Solar Energy Business

The bill defines an eligible wind or solar energy business as a person or entity engaged in the wind or solar energy manufacturing industry in Kansas and that satisfies other conditions stipulated by the Secretary of the Department of Commerce, which may include:

- Paying a minimum of \$32,500 of average annual compensation per Kansas employee; and
- Being classified by the North American Industrial Classification System as being in the manufacturing sector.

The bill defines an eligible wind or solar energy project as a project relating to the research, development, engineering, or manufacturing of a business component or product for either the wind or solar energy industries. An eligible project requires a minimum of \$30.0 million of project costs proposed to be invested in Kansas. The project also has to employ a minimum of 200 full-time employees within five years.

Once a project's application is approved, the bill requires the Secretary of Commerce to request the KDFA to issue bonds not to exceed \$5.0 million for a single eligible wind or solar energy project. No new project may be approved after July 1, 2013, which is the current statutory deadline for the approval of aviation projects.

Sale or Relinquishment of Certain Utilities

SB 80 amends existing law regarding the sale and relinquishment of regulatory authority over certain public utilities.

Sale of Utilities by Cities of the Third Class

In regard to the sale of electric light or waterworks plants; electric transmission lines; or water, gas or electric distribution systems by cities of the third class, the bill reduces the number of favorable votes needed to approve the sale, from a majority of the qualified voters to a majority of qualified voters who vote in the election.

Relinquishment of Natural Gas Utilities to Kansas Corporation Commission

The bill adds natural gas public utilities to the statute that authorizes a city to relinquish its regulatory powers over a privately owned utility. Under prior law a city was able to relinquish to the KCC its regulatory authority over only a privately owned water public utility. Cities may relinquish regulatory oversight of natural gas utilities. The new law requires the KCC to assume jurisdiction and control upon receipt of an ordinance relinquishing jurisdiction of the utility.

Renewable Energy Standards Act, Net Metering and Easy Connection Act, Compressed Air Energy Storage Act, and Various Other Energy-Related Provisions

Senate Sub. for HB 2369 enacts new law and amends existing law related to energy. The bill:

- Enacts the Renewable Energy Standards Act;
- Enacts the Net Metering and Easy Connection Act;

- Enacts new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amends the parallel generation statute;
- Amends the Kansas Air Quality Act in regard to its relationship to federal law and in regard to emergency authority;
- Amends existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Directs the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues;
- Amends the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;
- Amends existing law regarding entities that store hydrocarbons underground;
- Enacts the Compressed Air Energy Storage Act;
- Requires the purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and
- Requires the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric Power Corporation and the State.

Specific elements of the bill are described below.

Renewable Energy Standards Act

The bill enacts the Renewable Energy Standards Act requiring electric public utilities, except municipally-owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The KCC is given broad authority to adopt rules and regulations implementing the standards and establishing enforcement mechanisms, including administrative fines.

Renewable energy may be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products, such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells using hydrogen produced by one of the other renewable energy resources; and other sources of energy, not including nuclear power, which become available after enactment of the bill and that are certified as renewable under rules and regulations of the KCC.

The renewable portfolio requires utilities to obtain net renewable generation capacity constituting at least the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits may only be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the KCC.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000, will count as 1.10 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act (also part of the bill) or the parallel generation statute will count toward compliance with the renewable energy requirement.

The KCC shall to allow affected utilities to recover reasonable costs incurred by the utilities to meet the requirements of the Act.

Net Metering and Easy Connection Act

The bill enacts the Net Metering and Easy Connection Act and amends the parallel generation statute. The Net Metering Act requires any investor-owned electric utility to make net metering available to customer-generators under certain circumstances. Renewable energy resources that may be used to generate electricity under the Net Metering Act would be the same as those defined in the Renewable Energy Standards Act. The KCC may approve net metering tariffs requested by electric utilities for methods of renewable generation not described in the Net Metering Act.

The KCC shall to adopt rules and regulations to implement the Net Metering Act. Electric companies are able to recover costs incurred in connection with compliance with the Net Metering Act.

Customer-generators may utilize either the parallel generation statute or the Net Metering Act. Their choice must be made in writing and filed with the company serving the customer-generator. The maximum capacity of generating equipment allowed for use by customer-generators under the Act is 25 kilowatts for residential customers and 200 kilowatts for other customers.

The Act requires retail electric companies to measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter provided at no cost to the customer-generator by the electric company. If the company provides the customer-generator with more power during a billing period than the customer generates, the customer will be billed for the net amount of electricity provided by the company. If the amount of electricity generated by the customer exceeds the amount provided by the company, the net excess electricity generated by the customer will be carried forward from month to month and credited at a ratio of 1:1 against the customer's energy consumption. Credits

remaining at the end of the calendar year will expire. Reasonable costs incurred by a utility under the Net Metering Act will be recoverable in the utility's rate structure.

Customers' generating equipment must meet specifications established by the Act, including being appropriately sized to the customer-generator's electrical load and complying with specified safety, performance, interconnection, and reliability standards. The utility may not require a customer-generator to purchase additional insurance if the net metering facility meets the safety and performance standards in the Act. A utility will not be liable, directly or indirectly, for permitting or continuing to allow an attachment of a net metered facility or for the acts or omissions of a customer-generator that cause loss or injury, including death, to any third party.

An electric company is required to accept on its system only total customer-generator capacity equal to a maximum of one percent of the company's net generation capacity. The KCC may increase the limit after a hearing.

Energy Efficiency

The bill requires the Secretary of Administration to adopt rules and regulations within 18 months of the effective date of the Act:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008 if such purchases would be life-cycle cost-effective;
- Establishing energy efficiency guidelines for state agencies for the purchase of office products and equipment that are at least as energy efficient as similar products that qualify for the Energy Star® program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Establishing energy efficiency performance standards for state-owned and leased real property, and requiring state agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building. Lessors are required to address the performance standards based on the energy audit. Annually, the Secretary must submit a report to the Legislature, the Joint Committee on State Building Construction, the House Committee on Energy and Utilities, and the Senate Committee on Utilities, identifying properties where an excessive amount of energy is being used; and
- Prescribing energy efficiency performance standards for construction of state buildings. All new and, to the extent possible, renovated state-owned buildings must be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2007 or the 2006 International Energy Conservation Code (IECC). Regulations adopted under these provisions apply only if they are life-cycle cost-effective.

The Energy Office of the KCC must develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP), to the extent that funds are appropriated for that purpose.

Deregulation of Large Electric Cooperatives

The bill amends the law to allow large electric cooperatives to remove themselves from the KCC's regulatory jurisdiction regarding rates. Under the bill, the option to deregulate is expanded to cover the following entities:

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies or corporations that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and
- Any member-owned corporation formed prior to 2004.

Those entities and other cooperatives are under the jurisdiction of the KCC for purposes of the Renewable Energy Standards Act.

In the case of a generation and transmission cooperative that elected to be deregulated, the bill amends the law to require that a petition triggers a KCC review of a rate change when signed by at least 20 percent of that cooperative's members or by 5 percent of the aggregate retail customers of such members. In addition, the bill requires cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill also clarifies the statute regarding the portion of members of a retail distribution cooperative who must sign a rate review petition.

Kansas Air Quality Act Amendments

The bill amends the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act, unless authorized by the Legislature to do so. The restriction in the bill does not apply to a plan for a non attainment area under the federal Clean Air Act. The bill also prohibits rules and regulations under the State Act from being enforced in any area of the State prior to the time required under the federal Act. Counties are prohibited from utilizing home rule authority to create exemptions from, or to change the application of, the Kansas Air Quality Act.

The Secretary is prohibited from denying or delaying issuance of a permit required under the State Act if the requirements of that Act have been met by the applicant.

KSA 65-3012 is amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The new provision authorizes the Secretary of Health and Environment to issue a temporary order, directing the owner or operator of the pollution source to take steps necessary to prevent

the offending act or to eliminate the offending practice. The order may not exceed seven days in duration.

When the temporary order is issued, the Secretary may file an action in district court to enjoin the offending activity. Alternatively, the Secretary may request the Attorney General or the appropriate county or district attorney to file for the injunction. In addition, the Secretary may bring suit in any court of competent jurisdiction to immediately restrain the offending acts or practices. The court may issue a temporary or permanent injunction if the Secretary shows the offending condition or situation exists.

Persons aggrieved by an order of the Secretary issued under the new procedure are entitled to review the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party is not required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision has precedence over other cases in regard to order of trial.

Joint Committee on Energy and Environmental Policy

The bill requires the Joint Committee on Energy and Environmental Policy to study and make recommendations regarding the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, weatherization, energy conservation, alternative fuel vehicles and state energy programs. The results of these studies will be submitted to the Legislature in 2010 and 2011 as part of the Committee's annual report.

Kansas Electric Transmission Authority

The bill authorizes the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs, or other charges for the use of facilities owned, financed, or administered by KETA and for services rendered by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the KCC. Such fees may be charged only to the entity that requests services from KETA.

The amendment also clarifies that KETA's statutory rights and powers extend to electric transmission lines deemed compatible with plans adopted by the Southwest Power Pool (SPP), as well as to transmission lines with an operating voltage of 60 kilovolts or more that have been approved by the SPP.

Underground Hydrocarbon Storage Wells

The bill amends the law regarding underground hydrocarbon storage wells by adding a definition for "company or operator." The term is defined to mean any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

Compressed Air Energy Storage Act

The bill establishes a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC shall adopt rules and regulations addressing issues such as site selection, design, and operation criteria, and requirements for monitoring, safety, and closure.

The KCC shall establish rules and regulations establishing fees for permitting, monitoring, and inspecting compressed air storage facility operators. Moneys received under the Act will be deposited in the Compressed Air Energy Storage Fund, created by the Act, and used to pay the costs of regulation.

KDHE shall adopt rules and regulations related to air emissions from compressed air energy storage wells and storage facilities to ensure compliance with the Kansas Air Quality Act. The KCC and KDHE are authorized to enter into a memorandum of understanding concerning implementation of the Act.

The bill creates financial penalties for violations of the Act.

All rules and regulations issued pursuant to the Act must be adopted within 18 months of enactment of the new law.

Kansas Coal Requirement

Any new coal-fired electricity generation facility in Kansas constructed after the effective date of the Act must purchase at least five percent of its coal from Kansas coal mines if: the Kansas coal is cost-competitive with out-of-state coal; is sold on comparable terms and specifications; and is of an acceptable quality for use in the facility. In addition, the requirement does not apply if it would cause the facility to violate its air permit or a contractual obligation.

Settlement Agreement

The bill adds a new provision in the Kansas Air Quality Act to require the Secretary of Health and Environment to approve the air quality permit for Sunflower Electric Power Corporation's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009, between Sunflower and the State of Kansas. The settlement will resolve actions pending before various courts and administrative agencies.

Various Property Tax Provisions

House Sub. for SB 98, which relates generally to property taxes, renews the mandatory school district general fund property tax levy; amends the definition of public utility; and adds specific factors needed to be considered in the determination of fair market value for property tax purposes. Only one provision of the bill is pertinent to the subject of this memorandum.

Property Tax on Stored Gas

The bill amends the definition of public utility in KSA 2008 Supp. 79-5a01 to include marketers and other entities which own, broker, or market natural gas inventories stored for resale in underground formations in Kansas.

The bill stipulates that the purpose of this provision is to carry out the mandate of the electorate articulated in a constitutional amendment adopted in 1992 that explicitly provided for the property taxation of public utility inventories.

Construction of Electricity Transmission Lines

HR 6018 expresses the Legislature's support for the efforts of KETA to facilitate the construction of electricity transmission lines in the state. The resolution expresses the Legislature's encouragement for KETA to continue participating in proceedings of the KCC and the SPP regarding transmission of electricity in Kansas.

Energy Storage

HR 6011 requests the KCC to study and report to the Legislature on several issues related to energy storage. Specifically, the KCC is requested to do the following:

- Convene a group of stakeholders to study energy storage as a cost-effective way to stabilize renewable energy generation, address transmission congestion costs, increase system reliability, and increase the potential for distributive generation. The KCC is requested to submit a report and recommendations based on the study to the Legislature by January 1, 2010;
- Establish a method of cost recovery and earnings on investments in energy storage devices by electric utilities, and submit a report and recommendations on this method to the Legislature by January 1, 2010; and
- Address cost recovery if energy storage is used in conjunction with generation, including asking the SPP to determine how cost recovery in these circumstances should be treated, and report to the Legislature on such cost recovery by January 1, 2011.

2010

Carbon Dioxide Reduction Act—Amendments

HB 2418 amends provisions of the Carbon Dioxide Reduction Act regarding the liability of the State. Under the bill, except as permitted by the Kansas Tort Claims Act, no provision of the Carbon Reduction Act shall impose on the KCC, any of its employees, or the State of Kansas any liability for the underground storage of carbon dioxide or the maintenance of any carbon dioxide injection well or underground storage of carbon dioxide. In addition, the bill provides that the KCC is not prohibited from plugging, replugging, repairing, or remediation of any carbon dioxide injection well or underground storage in an emergency situation.

Recovery Zone Bonds and Energy Conservation Bonds

HB 2551 authorizes the Department of Commerce to distribute two types of bonds called recovery zone bonds and energy conservation bonds to counties and large municipalities in Kansas pursuant to the allocation methods specified in §§ 1400U-1 and 54D(e)(1) of the federal Internal Revenue Code, respectively. The allocation formula for the recovery zone bonds is

based upon unemployment rates in 2008, and for the energy conservation bonds the allocation is based upon total population. For the purposes of these two bonds, a large municipality is defined by federal statute to mean a city with a population greater than 100,000. The bill grants rule and regulation making authority to the Commerce Department to administer provisions of the Act.

Recovery Zone Bonds

The bill directs the Department of Commerce to give notice to each county and large municipality of its allotment. These units of local government may waive their usage of these bonds at any time. However, the bonds' usage is deemed to be waived if within the 60 days after the allocation notice, a local unit of government has not given the Department of Commerce written notice of intent to issue recovery zone bonds.

Qualified Energy Conservation Bonds

The provisions and deadline with regard to notice, the waiving of bond usage, and deadline for bond issuance are the same for qualified energy conservation bonds. Unlike recovery zone bonds, energy conservation bonds are allocated each year. After June 30 of each year, a county or municipality may apply to the Department for any unissued bonds. Qualified energy conservation bonds may be used for:

- Capital expenditures spent for energy reduction purposes;
- Research facilities and research grants for the study of alternative energy sources;
- Demonstration projects designed to promote the commercialization of alternative energy technologies; and
- Public education campaigns to promote energy efficiency.

2011

Electric Supply and Demand Reports; Gas System Reliability Surcharge

SB 224 contains provisions related to electric supply and demand reports and to the gas system reliability surcharge.

Electric Supply and Demand Reports

The bill requires the KCC to issue a biennial report on electric supply and demand for all electric utilities in Kansas, beginning February 1, 2013. The report shall include, but not be limited to, generation capacity needs, system peak capacity needs, and renewable generation

needs associated with the 2009 Kansas renewable energy standards. The report will be submitted to the House Energy and Utilities Committee and the Senate Utilities Committee.

Gas System Reliability Surcharge

The bill allows a regulated natural gas company that collects a gas system reliability surcharge from its customers to request an extension of up to 12 months beyond the current 60-month requirement for a full rate review by the KCC. A motion requesting the extension must be filed with the KCC, which determines the reasonable or necessary length of the extension, up to 12 months.

The gas system reliability surcharge allows a natural gas utility to begin rate recovery of capital spent on certain types of projects prior to a full rate review by the KCC.

Severance of Wind and Solar Rights; Markings on Anemometer Towers

SB 227 addresses two property issues involving renewable energy: preventing the permanent severance of wind and solar rights from a tract of land and establishing daylight marking requirements for anemometer towers. (Anemometers are instruments for measuring and recording wind speed.)

Severance of Wind and Solar Rights

The bill amends the law concerning conveyance of real estate. The bill allows only the surface owner of a tract of land to use the land to produce wind- or solar-generated energy, unless the owner has entered into a lease or easement for those rights for a definite period. The requirement does not apply to leases filed before July 1, 2011. In addition, the requirement does not affect any otherwise enforceable restriction on the use of the land for production of wind or solar energy, nor does it prohibit conservation easements.

The bill also requires any conveyance for solar resources to include the same types of information that must be included in an instrument conveying interest in wind resources.

Visibility Marking Requirements for Anemometer Towers

The bill requires specific daylight visibility markings for any anemometer tower at least 50 feet in height and located outside the corporate boundaries of a city, provided the appearance of the tower is not otherwise mandated by state or federal law.

The following markings are required at the time the tower is erected: the top one-third of the anemometer tower must be painted in equal, alternating bands of aviation orange and white; two marker balls must be attached to, and evenly spaced on each outside guy wire; and one or more seven-foot safety sleeves must be placed at each anchor point.

The requirements apply to any anemometer tower erected on or after July 1, 2011. Towers erected before that date are required to be marked within two years of the effective date of the Act. Failure by an owner of an anemometer tower to properly mark the tower is a class C nonperson misdemeanor.

Environmental Protection Agency Regulations

HCR 5009 urges the Environmental Protection Agency (EPA) to continue to allow state permit-writers the flexibility to evaluate power plants on a site-by-site basis when determining the best available technology for cooling water intake structures to minimize adverse environmental impacts. The resolution states that a one-size-fits-all approach, mandating the use of cooling towers, could cause more adverse environmental impacts, including increases in emissions of greenhouse gases and particulate matter, evaporative water loss, and solid waste production than it prevents, fish impingement, and entrainment.

Environmental Train Wreck

HR 6008 expresses concern about the numerous new regulations proposed by the EPA, particularly in the area of air quality and regulation of greenhouse gas emissions. The resolution urges Congress to adopt legislation prohibiting the EPA from regulating greenhouse gas emissions, to impose a moratorium on new air quality regulation by the EPA for at least two years (except in the case of an imminent health or environmental emergency), and to require the Administration to undertake a comprehensive study of the cumulative effect of the proposed regulations on America's economic competitiveness, including a cost-benefit analysis of all current and planned EPA regulations.

Regulation of Interstate Underground Gas Storage Fields

HR 6024 urges the Federal Energy Regulatory Commission, the U.S. Department of Transportation, and the KCC to adopt legislation or policies that would provide Kansas and other states with administrative jurisdiction to assure the safe operation of wellbores associated with the underground storage of natural gas that is in interstate transportation. A recent federal court ruling precludes state authorities from regulating the safety of underground storage of gas in interstate transportation.

Regulation of Hydraulic Fracturing

HR 6025 urges the U.S. Congress to preserve the primacy of the states to regulate hydraulic fracturing as a component of states' regulatory programs for drilling, completion, operation, and plugging of oil and gas wells; and to maintain the exemption from the Safe Drinking Water Act for hydraulic fracturing.

Extension of the Agricultural Ethyl Alcohol Producer Incentive Fund

HB 2122 makes several changes to the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund (Incentive Fund). The bill extends the sunset date for the Incentive Fund from July 1, 2011, to July 1, 2018; reduces the maximum incentive rate for all producers from \$0.075 per gallon to \$0.035 per gallon; allows any producer of agricultural ethyl alcohol (ethanol) who begins production on or after July 1, 2001, but prior to July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons; allows any producer of cellulosic alcohol who begins production on or after July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons. This last

provision does not apply to producers who commence alcohol production from grain. On June 30 of each fiscal year, any unencumbered balance in the Incentive Fund shall be transferred to the Motor Vehicle Fuel Tax Refund Fund.

2012

Pipeline Safety Program Amendments

SB 374 amends the law regarding the Pipeline Safety Program operated by the KCC. The bill makes the following changes:

- Citations of the federal statutes referenced as the source of Kansas' pipeline safety regulations are updated;
- The aggregate maximum civil penalty for any related series of violations is increased from \$500,000 to \$1.0 million; and
- The requirement to pay an annual fee to the KCC to recover a portion of the costs of safety inspections is extended to all pipeline operators subject to KCC regulatory oversight. Currently, 55 of the 127 operators of intrastate natural gas pipelines are not assessed a fee for safety inspections.

Kansas Storage Tank Act

SB 406 amends the Kansas Storage Tank Act to provide a reimbursement fund to assist property owners where abandoned underground storage tanks (USTs) are present.

The bill defines several terms, including the "Underground Storage Tank Redevelopment Fund", "abandoned underground storage tank", and "property owner." A "property owner" is defined as a person who owns real property on which an abandoned UST is located.

Specifically, the bill provides an opportunity for property owners to be eligible for reimbursement for expenses associated with the removal of abandoned USTs. The following requirements must be met by a property owner in order to qualify for reimbursement:

- The property owner has never placed petroleum in the UST or withdrawn petroleum from the UST;
- The property owner is not the U.S. government or any of its agencies;
- The property owner is in substantial compliance with the Kansas Storage Tank Act;
- The property owner provides 30-day notice and access to KDHE to perform an environmental assessment of the site during UST removal; and

- If petroleum contamination was discovered during the environmental assessment of the site, the property owner would apply to the UST Fund to perform corrective action to address the contamination.

Property owners are not eligible for reimbursement, unless the UST owner or operator was unable or unwilling to perform corrective action or cannot be found. In such cases, KDHE is able to recover all reimbursements paid and any related administrative and legal expenses from the UST owner or operator.

If a property owner is eligible for reimbursement, an application and UST removal plan needs to be submitted to and approved by KDHE. Upon approval of the UST removal plan, the property owner obtains at least three bids which are submitted to KDHE, to perform the UST removal. The Secretary of KDHE has the discretion to reimburse the property owner for permanent closure expenses based on the following criteria:

- Whether the UST facility was registered with KDHE on or after May 1, 1981;
- The UST contained petroleum products; and
- A deed restriction was placed on the property prohibiting the installation of USTs for ten years following the date of the UST removal.

Only expenses for activities that are reasonable and necessary to permanently close a UST facility are eligible for reimbursement. Reasonable and necessary activities eligible for reimbursement can include the following:

- Removal of the tank and piping system;
- Cleaning and disposal of tanks; and
- Disposal of waste petroleum and other waste material, including concrete.

The bill extends the sunset for the underground and above ground reimbursement funds from July 1, 2014, to July 1, 2024.

The bill also makes several technical changes to update references to federal code and associated effective dates. Technical changes also include references to the UST Redevelopment Fund named in existing statutes.

Powers and Duties of the Kansas Corporation Commission-Amendments

Senate Sub. for HB 2526 amends several statutes regarding energy and the powers and duties of the KCC. The bill provides explicit authority for the KCC to regulate hydraulic fracturing, imposes a time limit of 180 days for the KCC to act on applications for certificates of public convenience, broadens the definition of renewable energy resources in the Renewable Energy Standards Act to include storage connected to any renewable generation by means of energy storage equipment, and requires the KCC to annually determine and report the statewide retail rate impact of compliance with the Renewable Energy Standards Act.

Regulation of Hydraulic Fracturing

The bill amends KSA 55-152 to allow the KCC to promulgate rules and regulations necessary for the supervision and disclosure of any hydraulically fractured well. (Existing law authorizes the KCC to promulgate rules and regulations for the construction, operation, and abandonment of any well and the protection of the usable water in this state from any well.) This bill gives the KCC explicit authority to regulate wells that have been hydraulically fractured.

Time Limit for Issuance of Certificate of Convenience

KSA 66-131 is amended to impose a 180-day time limit for the KCC to act on applications for certificates of public convenience. (Any common carrier or public utility that wishes to operate in Kansas is required to obtain such a certificate from the KCC.) Upon mutual agreement between the KCC and the carrier or utility, the deadline may be waived.

Energy Storage as a Renewable Resource

The bill amends KSA 66-1257 by broadening the definition of renewable energy resources in the Renewable Energy Standards Act. Energy storage connected to any renewable generation by means of energy storage equipment is considered a renewable resource for purposes of the Act. In addition, the bill removes existing limitations on the types of new hydropower that qualify as renewable energy resources.

This bill allows utilities to count energy produced by renewable sources and stored for later use toward the utility's net renewable generation capacity, in order to comply with the renewable portfolio standards. (Under existing law, except those owned by municipalities, utilities are required to have net renewable generating capacity constituting a certain percentage of their peak demand).

Statewide Retail Impact of Compliance with the Renewable Energy Standards Act

The bill amends KSA 66-1260 to require the KCC to annually determine the annual statewide retail rate impact that results from affected utilities meeting the renewable portfolio requirements of the Act. The KCC establishes the requirements for submission of necessary information either in rules and regulations or by order of the KCC.

The KCC is required to submit an annual report of the retail rate impact for the previous year to the Governor, the Senate Committee on Utilities, and the House Committee on Energy and Utilities by March 1 of each year, beginning in 2013.

Deregulation of Natural Gas Cooperative Public Utilities

HB 2489 allows a natural gas cooperative public utility to be exempt from the rate-making jurisdiction of the KCC, subject to the affirmative vote of a majority of the cooperative's members voting on the proposal. The utility continues to be subject to KCC jurisdiction for such issues as pipeline safety, customer complaints, and certificated territory.

If rate deregulation is approved, the bill requires notice to customers of proposed rate changes and a public schedule of rates and charges. A cooperative that fails to provide either the required notice or the schedule of rates and charges is subject to civil penalties. In addition, the bill outlines the process by which cooperative members could request a KCC investigation of changes in rates, and gives the KCC authority to remedy rates, charges, or classifications it deems unjust.

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