

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2233**

As Agreed to May 13, 2015

**Brief\***

HB 2233 would establish the procedure for developing and submitting a state plan (Plan) to the federal Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan (CPP) rule.

***Authority of the Secretary of Health and Environment***

The bill would authorize the Secretary of Health and Environment (Secretary) to develop and submit a Plan to the EPA for compliance with the requirements of the proposed federal CPP rule.

The Secretary would be authorized to implement the Plan through flexible regulatory mechanisms, including the averaging of emissions, emissions trading, or other alternative implementation measures that the Secretary determines to be in the interest of Kansas.

The Secretary also could enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units with Kansas to implement these carbon dioxide emission standards. The agreements could aggregate the carbon dioxide emissions levels from electric resources in the State, including coal, petroleum, natural gas, or renewable energy resources as defined in statute, that are

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owned, operated, or utilized by power purchase agreements by utilities for purposes of determining compliance with the carbon dioxide emission standards.

***MOU - Secretary of Health and Environment and the Kansas Corporation Commission***

The Secretary and the Kansas Corporation Commission (KCC) would be required to enter into a memorandum of understanding (MOU) concerning implementation of the requirements and responsibilities under the Kansas Air Quality Act.

***Clean Power Plan Implementation Study Committee***

The bill would create the Clean Power Plan Implementation Study Committee (Committee), which would hold informational hearings and receive updates from the Kansas Department of Health and Environment (KDHE), KCC, and the Attorney General about the implications of the adoption of a Plan for the CPP. The Committee would be made up of 11 voting members, including:

- Five members from the Senate Committee on Utilities, including:
  - Chairperson;
  - Vice-chairperson;
  - Ranking Minority Member; and
  - Two others appointed by the President of the Senate.
- Six members from the House Committee on Energy and Environment, including:
  - Chairperson;
  - Vice-chairperson;

- Ranking Minority Member; and
- Three others appointed by the Speaker of the House.

Members would be appointed on or before July 1, 2015, for a term ending on June 30, 2017, when the Committee would sunset. Staff of the Office of Revisor of Statutes, Legislative Research Department, and Division of Legislative Administrative Services would provide any assistance as requested by the Committee.

***Submission of a Plan and Information to the Committee***

The Secretary would be required to submit to the Committee:

- A plan to investigate, review, and develop a Plan no later than the first week of November 2015;
- Information on any final rule adopted by the EPA regarding the CPP no later than February 1, 2016; and
- Any information requested by the Chairperson of the Committee.

The KCC would be required to submit to the Committee:

- Information regarding each utility's re-dispatch options along with the cost of each option;
- The lowest possible cost re-dispatch options on a state-wide basis; and
- The impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

If a proposed Plan is disapproved by the Committee, the Secretary would be required to resubmit a revised Plan to the Committee.

### ***Submission of a Plan to the EPA***

Prior to submitting any Plan to the EPA, the Secretary would be required to:

- Submit the Plan as proposed rules and regulations;
- Request a review of the proposed Plan by the Office of the Attorney General, who could certify to the Secretary that the Plan will not hinder, undermine, or harm the State's position in any current or pending litigation relating to the federal CPP rule; and
- Not submit a Plan if the Attorney General review indicates the Plan would adversely impact the State's legal position in any current or pending litigation relating to the federal CPP rule.

Submission of the Plan to the EPA would be dependent upon the final adoption of the federal CPP rule. If the federal emission guidelines are not adopted, or are adopted and subsequently suspended or vacated in whole or part, the Secretary would be prohibited from carrying out the Plan.

The Secretary would be responsible for submitting a Plan to the EPA in a timely manner. The Secretary would be required to prepare and submit any request for an extension of time to file a Plan, if necessary, an interim Plan or a final Plan to the EPA. Any interim or final Plan would be submitted by the Secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the EPA. Any final Plan submitted to the EPA could only be submitted if the Secretary has previously submitted the Plan for review by the Committee.

The Secretary could submit any proposed Plan to the EPA that has been submitted to the Committee and has not been disapproved by the Committee within 30 days of the Committee receiving the Plan.

The bill would be in effect upon publication in the *Kansas Register*.

### **Conference Committee Action**

The Conference Committee added language regarding the Secretary's responsibility to submit a Plan to the EPA. Changes included adding language regarding an extension of time to file a Plan and other language regarding an interim or final Plan that could be submitted, if necessary. The language also clarified that any final Plan submitted to the EPA may only be submitted if the Secretary has submitted the Plan for review by the Committee.

The Conference Committee also changed the date the Secretary is required to submit a Plan to the Committee from November 1, 2015, to the first week of November. In addition, the Conference Committee adopted a technical amendment to address consistency within the bill language.

### **Background**

The bill was introduced by the House Committee on Energy and Environment.

In the House Committee hearing, a Commissioner of the KCC provided testimony in favor of the bill, along with the Director of the Utilities Division, KCC. Written proponent testimony was provided by the Kansas Chamber of Commerce.

Testimony in opposition to the bill was provided by representatives of the KDHE, Kansans for Clean Energy, and

Sunflower Electric Power Corporation which also spoke on behalf of Mid-Kansas Electric Company, Midwest Energy, and the Kansas Electric Cooperatives.

Neutral testimony was provided by representatives of the Kansas Electric Power Cooperative, Inc. and KCP&L, which also spoke on behalf of Westar Energy and Empire District Electric. Kansas City BPU provided written testimony.

On February 25, 2015, the House Committee made numerous amendments to the bill, including:

- Authorizing the Secretary to develop and submit a Plan to the EPA;
- Authorizing the Secretary to implement a Plan through various regulatory mechanisms;
- Prohibiting the Secretary from permitting participation in an organized carbon emission trading market without specific statutory authority, but allowing Kansas utilities to aggregate, share, or purchase emissions within a utility's units or between Kansas utilities to achieve a mass-based or rate-based goal;
- Requiring the Secretary and the KCC to conduct a joint investigation and to hold a joint hearing on any Plan recommendations;
- Requiring the Secretary and the KCC to issue a joint final order or joint interim order establishing and defining the Plan;
- Requiring the Secretary to submit the Plan to legislative committees for review and approval; and
- Prohibiting the Secretary from carrying out the Plan if federal emission guidelines are not adopted or

are adopted and subsequently suspended or vacated in whole or in part.

On February 26, 2015, the bill was referred to the House Committee on Appropriations and then was re-referred to the House Committee on Energy and Environment on March 12, 2015.

On March 19, 2015, the House Committee further amended the bill by allowing, instead of requiring, the Secretary to request an extension from the EPA to submit the Plan and inserting the requirement for the legislative committees to provide input instead of approval of the Plan.

The House Committee also made the following amendments on March 19:

- The Secretary and the KCC would be required to submit to the Senate Committee on Utilities and the House Committee on Energy and Environment:
  - A plan to investigate, review, and develop a Plan no later than November 1, 2015; and
  - Information on any final rule adopted by the EPA regarding the CPP no later than February 1, 2016;
- The Secretary would be required to submit the proposed Plan to a joint meeting of the Senate Utilities Committee and the House Energy and Environment Committee instead of submitting the Plan to the committees separately;
- The timeline for the joint meeting to convene and the committees to offer comments would be established; and
- The Secretary would be required to provide notice to the chairpersons of the legislative committees if the CPP rule is delayed or not issued.

On April 2, 2015, the Senate Committee on Utilities amended the bill by striking the House Committee language regarding the Secretary's duties for submitting a Plan and legislative oversight of the Plan. The Senate Committee adopted new language regarding the Secretary's and the KCC's duties for submitting a Plan and created the Committee to review the submitted Plan.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the KCC indicates passage of the bill would increase FY 2016 fee fund expenditures in the range of \$400,000 to \$500,000 to hire outside consultants. The consultants would evaluate re-dispatch models submitted to the KCC by the Southwest Power Pool and other utilities. The fiscal effect of the bill for KDHE would be negligible, because any additional work required by the bill would be absorbed within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

Clean Power Plan; U.S. Environmental Protection Agency; Kansas Department of Health and Environment; Kansas Corporation Commission

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