

Legislative Research Department

2015 Summary of Legislation

ENERGY AND UTILITIES

Renewable Energy Standard; Property Tax Exemption; House Sub. for SB 91

House Sub. for SB 91 replaces the renewable energy portfolio requirements with a voluntary renewable energy goal, reduces the lifetime property tax exemption to ten years for new renewable resources after December 31, 2016, and excludes individuals or companies that generate electricity from renewable resources at wholesale only from the definition of public utility.

Renewable Energy Goal

The bill establishes the following renewable energy standard for Kansas, as of January 1, 2016: a voluntary goal that 20 percent of a utility's peak demand within the state be generated from renewable energy resources by the year 2020. The bill also declares it is in the public interest to promote renewable energy development in order to best utilize the abundant natural resources found in the state.

On January 1, 2016, the voluntary goal will replace the current renewable energy portfolio standard that requires affected utilities to achieve net renewable generation capacity equal to at least 20 percent of the utility's peak demand by the year 2020, either by generating or purchasing electricity from renewable resources or by purchasing renewable energy credits.

The portfolio standard also sets intermediate standards to be achieved for the years 2011 through 2015 (10 percent) and the years 2016 through 2019 (15 percent).

The bill continues all rules and regulations of the Kansas Corporation Commission (KCC) in effect on June 30, 2015, that allow a utility to recover costs incurred to meet the renewable portfolio standard (RPS). In addition, the KCC will be required to allow affected utilities to recover reasonable costs that have been:

- Committed to be incurred to comply with the RPS prior to its repeal; or
- Incurred as a result of meeting the 20 percent goal.

The bill also specifies nothing in the Act shall be construed to impair any existing contracts, leases, or agreements.

The bill repeals statutes related to the mandate that required the KCC to promulgate rules and regulations to do the following: establish renewable portfolio requirements, calculate and report the statewide retail rate impact of the portfolio requirements, set penalties for violations of portfolio requirements, and establish a certification process for use of renewable energy resources. The bill also deletes definitions specific to the existing mandate.

Changes to Property Tax Exemption

The bill provides a property tax exemption for the life of property that is actually and regularly used to generate electricity using renewable energy resources or technologies if the facility files an application for an exemption or received a conditional use permit on or before December 31, 2016.

After December 31, 2016, exemptions granted for property primarily used for wholesale sale of renewable energy resources for which applications were filed after December 31, 2016, will be limited to ten years.

The bill amends a law governing certain property tax exemptions to state an electric generation facility used predominantly to produce and generate electricity utilizing renewable energy resources or technologies will not qualify for a commercial and industrial machinery property or ad valorem tax exemption.

Definition of Public Utility for Property Tax Classification

The bill specifically excludes from the definition of public utility any entity to the extent that its activities or facilities generate, market, or sell electricity at wholesale only, has no retail customers, and is produced and generated using renewable energy resources or technologies.

Land-Spreading of Drilling Waste; Disposal of Radioactive Materials; Water Quality Variances; SB 124

SB 124 authorizes the Secretary of Health and Environment to adopt rules and regulations on the land-spreading of solid waste generated by drilling oil and gas wells. The bill extends indefinitely the land-spreading program managed jointly by the Kansas Department of Health and Environment (KDHE) and Kansas Corporation Commission (KCC).

The bill requires the seller of any property where land-spreading has occurred within the previous three years to disclose the land-spreading to any potential purchaser of the property prior to closing. In addition, the bill requires the KCC, in coordination with KDHE, to annually present a report on land-spreading to the Senate Committee on Natural Resources, Senate Committee on Utilities, Senate Committee on Ways and Means, House Committee on Agriculture and Natural Resources, House Committee on Energy and Utilities, and House Committee on Appropriations.

The bill allows for the disposal of waste containing low concentration of naturally occurring radioactive materials (NORM) and technologically-enhanced NORM (TENORM) by underground burial. The underground burial of all low-level radioactive waste had been prohibited. The bill authorizes the Secretary of Health and Environment to promulgate rules and regulations on or before July 1, 2016, regarding the allowable concentrations and sources of NORM and TENORM waste.

The bill also updates the definition of “by-product material” with the language specified by the federal Nuclear Regulatory Commission and replaces a reference to a Board that no longer exists with a reference to the Secretary of Health and Environment.

Finally, the bill allows the Secretary of Health and Environment, through rules and regulations, to establish variances to water quality standards that may apply to specified pollutants, permittees, or waterbody segments that reflect the highest attainable condition during the specified time period for the variance.

Gas Wells for Personal Use; Abandoned Oil and Gas Well Fund; HB 2231

HB 2231 allows an operator of one or more natural gas wells to obtain an annual license from the Kansas Corporation Commission (KCC) when the natural gas wells are used strictly for personal use on the property where the gas wells are located. The fee will be \$25, rather than the standard \$100 annual license fee under prior law. Also under prior law, applicants for an annual license were permitted to pay the reduced fee of \$25 for those operating one gas well used strictly for the purpose of heating a residential dwelling.

The bill extends the sunset date on the statutory transfers to the Abandoned Oil and Gas Well Fund (Fund) of the KCC from July 1, 2016, to July 1, 2020. The bill also deletes a quarterly transfer of \$100,000 from the State Water Plan Fund

to the Fund and increases the quarterly transfer from the KCC's Conservation Fee Fund to the Fund from \$100,000 to \$200,000.

In addition, the bill deletes law regarding a prohibition on transfers from the State General Fund to the Fund in FY 2013, FY 2014, and FY 2015 and the aggregate amount of the transfers from the State Water Plan Fund to the Fund in those three fiscal years.

Clean Power Plan—Authority of the Secretary of Health and Environment; Memorandum of Understanding Between the Secretary of Health and Environment and the KCC; Clean Power Plan Implementation Study Committee; Submission of a Plan to the Committee and to the U.S. Environmental Protection Agency; HB 2233

HB 2233 establishes 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 authorizes 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 is 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 may 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 may 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 owned, operated, or utilized by power purchase agreements by utilities for purposes of determining

Clean Power Plan—Authority of the Secretary of Health and Environment; Memorandum of Understanding

Between the Secretary of Health and Environment and the KCC; Clean Power Plan Implementation Study Committee; Submission of a Plan to the Committee and to the U.S. Environmental Protection Agency; MOU—Secretary of Health and Environment and the Kansas Corporation Commission The Secretary and the Kansas Corporation Commission (KCC) are 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 creates the Clean Power Plan Implementation Study Committee (Committee), which will 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 will be made up of 11 voting members:

- 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 were to 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 will provide any assistance as requested by the Committee.

Submission of a Plan and Information to the Committee

The Secretary is 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 is 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 will 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 will 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 may 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 is 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 is prohibited from carrying out the Plan.

The Secretary is responsible for submitting a Plan to the EPA in a timely manner. The Secretary is 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 will 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 may be submitted only if the Secretary has previously submitted the Plan for review by the Committee. The Secretary may 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.

Environmental Stewardship Fund; HB 2192

HB 2192 creates the Environmental Stewardship Fund (Fund) in the Department of Health and Environment (KDHE) to pay for remediation activities at contaminated “orphan” sites, i.e., sites with no party responsible for cleanup. It is funded by a portion of the proceeds from the environmental assurance fee, a \$0.01 per gallon fee already being assessed on petroleum products other than aviation fuel. The Fund has an operating minimum of \$2.0 million and a maximum of \$5.0 million.

The bill also creates an incentive program for owners of single-wall underground petroleum tanks who replace those tanks with secondary containment systems. The incentive program will reimburse applicants no more than \$50,000 per facility. The incentives will be paid from the Underground Storage Tank (UST) Redevelopment Fund, up to a maximum of \$3.0 million per fiscal year. As part of this program, KDHE will waive the first costs of corrective action if contamination is discovered during the tank replacement. Essentially, this waives the “deductible” a tank owner must pay before being eligible for UST Trust Fund moneys to assist with cleanup. The Secretary of Health and Environment is authorized to adopt rules and regulations deemed necessary to carry out the program.

Environmental Remediation; HB 2193

HB 2193 establishes the Voluntary Risk Management Program and amends law regarding the Voluntary Cleanup and Property Redevelopment Act.

Voluntary Risk Management Program

The bill establishes the Voluntary Risk Management Program (Program), which will be administered by the Kansas Department of Health and Environment (KDHE) for low-risk contaminated sites. The bill also creates the Risk Management Fund (Fund).

A responsible party who chooses to participate in the Program enters into an enforceable agreement with KDHE to carry out remediation activities agreed to in a risk management plan and pays a one-time fee of at least \$2,500, which will be deposited in the Fund. The Fund can be used to administer the Program and perform necessary remediation activities if one of the sites in the Program becomes orphaned (no responsible party) in the future. A risk management plan can be terminated if KDHE determines the plan is no longer necessary.

The Secretary of Health and Environment is required to adopt rules and regulations to implement the provisions of the Program.

Voluntary Cleanup and Property Redevelopment Act

The bill also amends the Voluntary Cleanup and Property Redevelopment Act (Act), which is administered by the KDHE Bureau of Environmental Remediation. The bill makes the following changes:

- Allows KDHE to issue a determination that no further remedial action is needed at a site based on the results of a risk analysis that evaluates the property and surrounding properties as a whole. Under prior law, sites could

not be closed if contamination exceeded state standards, regardless of the risk to human health or the environment;

- Adds a requirement that the voluntary cleanup plans and associated documents be available for public review upon request from a member of the public. The plans and documents also must be indexed and posted on the KDHE website, upon determination by KDHE that a voluntary cleanup plan is acceptable, and for at least five years after the determination that no further remedial action is needed at the site;
- Allows KDHE to issue a nearby, non-responsible property owner who had contamination migrate to that property a determination that no further remedial action is needed even if the party responsible for the contamination is not in the State Cleanup Program; and
- Eliminates the requirement for KDHE to determine which environmental consulting companies are qualified to prepare environmental assessments for the Voluntary Cleanup Program.

JUDICIARY

Scrap Metal Theft Reduction Act; HB 2048

HB 2048 establishes the “Scrap Metal Theft Reduction Act” (Act) by adding and amending law related to scrap metal dealer registration and scrap metal sales. Additionally, the bill amends certain criminal provisions related to scrap metal theft.

Scrap Metal Theft Reduction Act

The bill gives the Attorney General jurisdiction and authority over the implementation, administration, and enforcement of the Act, including certain specified powers, and authorizes the Attorney General to adopt rules and regulations to implement the Act.

The bill establishes the Scrap Metal Theft Reduction Fee Fund to be administered by the Attorney General, which will be credited with all fees, charges, or penalties collected by the Attorney General under the Act. Expenditures from the Fund will be used for the administration of the duties, functions, and operating expenses incurred under the Act.

By July 1, 2016, the Attorney General is required to establish and maintain a database of scrap metal sales regulated elsewhere in the Act. Information from this database will be used for law enforcement and other purposes necessary to implement and enforce the Act. Information in the database will be confidential and released only to law enforcement for authorized uses.

The information is not a public record or subject to the Kansas Open Records Act.

The bill gives the Attorney General power to administer oaths and affirmations, subpoena witnesses or matter (in-state or out-of-state), and collect evidence to investigate possible violations of the Act. The bill specifies how service may be made for these purposes. The Attorney General may request a court to order an individual to comply with a subpoena, and the bill provides immunity for a person who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination. The Attorney General may apply for, and the district court can order injunctive relief action against, the corporate charter or other licenses, permits, or certificates of any entity failing or refusing to file any statement or report required by the Act, or other relief as may be required against such entities.

On and after January 1, 2016, the bill establishes civil penalties of \$100 to \$5,000 for each violation of the Act by a scrap metal dealer, which can be imposed by the Attorney General and will be subject to appeal under the Kansas Judicial Review Act.

On and after January 1, 2016, the bill allows the Attorney General to bring a civil action to obtain a declaratory judgment that an act or practice violates the Act; enjoin or restrain any person who has violated, is violating, or is likely to violate the Act; recover reasonable expenses and investigation fees; or impose any civil penalty authorized by the Act. The court is allowed to take these actions without requiring bond of the Attorney General. The Attorney General is allowed to accept a consent judgment, which must be approved by the district court. Violation of such consent judgment will be subject to penalties for violation of a court order. Civil penalties of up to \$5,000 for each violation will be imposed, and willful violation of a court order under the Act will incur a civil penalty of up to \$10,000 per violation.

The bill establishes jurisdiction for Kansas courts over any person who, in-person or through an agent or instrumentality, engages in business as a scrap metal dealer as defined in the Act, and provides for venue in Shawnee County District Court or in any other district otherwise authorized by law.

The bill prohibits municipalities from enacting or enforcing any ordinance, resolution, or regulation relating to the implementation, administration, and enforcement of the Act, and declares any such ordinance, resolution, or regulation adopted prior to July 1, 2015, null and void. No action or prosecution based upon such ordinance, resolution, or regulation may be taken for any violation on or after July 1, 2014.

The bill amends existing statutes related to scrap metal to incorporate them within the Act.

Within the scrap metal definitions statute, the bill amends the definitions of “scrap metal dealer,” “regulated scrap metal,” “junk vehicle,” “nonferrous metal,” and “vehicle part.” The bill removes definitions of “regulated scrap metal yard,” “ferrous metal,” and “tin,” and adds definitions of “person” and “attorney general.”

In the statute setting forth transaction requirements for scrap metal sellers, the bill makes clarifying amendments to several requirements. It moves a requirement for a signed statement by the seller to this statute from the statute setting forth transaction requirements for scrap metal buyers. The bill also amends this section to require a dealer to photograph the seller and any regulated items being sold and to keep the photographs with the transaction record and dealer’s register of information. Dealers are required to forward the information required by this section to the database established by the Act. The bill further amends this section to remove exceptions related to transactions involving catalytic converters and prohibitions on payment methods other than prenumbered checks or automated cash or electronic payment distribution. Exceptions for sellers who are scrap metal dealers are clarified and an exception for sellers who are licensed vehicle dealers is added.

In the statute setting forth transaction requirements for scrap metal buyers, the bill removes vehicle titles as acceptable documents to be provided by the seller of a vehicle purchased from an impounding facility or agency (leaving a bill of sale as the only option). The bill adds certain vendors to the list of entities for whom sellers must be authorized in order to sell restricted scrap metal items and adds “burnt wire” to the list of restricted scrap metal items.

A statute setting forth misdemeanor penalties for the violation of the existing statutes described above is repealed.

In the statute governing scrap metal dealer registration, the bill removes or transfers to the Attorney General registration requirements involving the board of county commissioners or the governing body of a city. The bill requires the Attorney General to establish a system for the public to confirm scrap metal dealer registration certificates, but disclosure of information from the system shall not constitute an endorsement of any scrap metal dealer. The bill requires applicants to provide additional information regarding their names, corporate structure, and location and hours. The list of prior convictions within ten years an applicant must disclose is expanded to include all crimes involving property, poisoning a domestic animal, perjury, compounding a crime, obstructing legal process or official duty, falsely reporting a crime, interference with law enforcement, interference with judicial process, or any crime involving dishonesty or false statement, including similar convictions in other jurisdictions. The bill allows the Attorney General to set registration fees of \$500 to \$1,500 per place of business, and the registration period is lowered from ten years to one year, with renewal fees of not more than \$1,500. A provision making violation of the registration provisions a class A nonperson misdemeanor is removed.

Effective January 1, 2016, the list of disqualifications for registration is expanded to include:

- A person who is not a U.S. citizen or legal permanent resident;
- A person who has entered into a diversion agreement for certain crimes; and
- A person who does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license. The disqualifications statute is also amended with the following provisions, effective January 1, 2016:

- The look-back period for current disqualifications involving revocation or false statements on applications is extended from three to ten years. The look-back period for the disqualifying crimes is extended from five to ten years, and the bill clarifies that disqualifying crimes include those involving dishonesty or false statement, or similar convictions in other jurisdictions;
- A disqualifying provision for convictions within the preceding five years of violating the existing scrap metal statutes is removed; and
- The bill allows a criminal history records check for applicants for registration, including fingerprinting provisions. An applicant disqualified due to criminal history record information shall be informed in writing of the decision.

The statute governing registration suspension is amended, effective January 1, 2016, to reflect the transfer of jurisdiction from local authorities to the Attorney General and the restructuring of the Act. Nonpayment of a civil penalty after notice that the penalty is more than 30 days past due is added as a reason for revocation or suspension. A provision for appeal to the district court is removed and replaced with a provision for appeal in accordance with rules and regulations promulgated by the Attorney General.

Criminal Provisions

The bill amends the statute providing for prima facie evidence of intent to permanently deprive an owner or lessor of possession, use, or benefit of property to clarify the methods by which someone giving false identification may obtain control over property and to establish that various actions involving the failure to give information or giving of false information required by the Act or transportation or alteration of scrap metal shall be such prima facie evidence under the statute in a prosecution for theft involving regulated scrap metal.

The bill amends the statute governing the crime of criminal damage to property to create the crime of aggravated criminal damage to property, which is defined as criminal damage to property, if the value or amount of damage exceeds \$5,000, committed with the intent to obtain regulated scrap metal or related items, where the crime is committed on any building, structure, residence, facility, site, place, property, vehicle, or infrastructure. The bill sets forth a number of specific locations or properties that fall within these categories, and it provides definitions for “infrastructure” and “site.” The new crime is a severity level 6, nonperson felony, and a special sentencing rule is added to the sentencing grid statute imposing a sentence of presumptive imprisonment where an offender has a prior conviction for any nonperson felony.

In amendments to the criminal damage to property statute and the authorized dispositions statute, the bill sets forth various costs to be included in determining the amount of damage to property, including cost of repair or replacement; loss of production, crops, and livestock; labor and material costs; and costs of equipment used to abate or repair the damage.

The bill also makes a reconciling amendment to the authorized dispositions statute and repeals a conflicting version of the statute.

The bill enacts new law in the Kansas Code of Criminal Procedure establishing that, at a preliminary examination, the business records containing the details of the sales or transactions maintained by scrap metal dealers pursuant to the Act may be admitted into evidence as if the individuals who made the record and the records custodian had testified in person.

LOCAL GOVERNMENT

Annexation of Noncontiguous Land; HB 2003

HB 2003 amends law related to annexation of noncontiguous land by a city, sometimes called “island” annexation. Specifically, the bill changes authority for unilateral annexation of land owned by or held in trust for a city by adding a requirement that the land adjoin the city.

The bill also changes provisions regarding consent annexation of noncontiguous land to require the affirmative vote of two-thirds of the members of the Board of County Commissioners, rather than a simple majority.

In addition, the bill amends law regarding unilateral annexation of highway right-of-way by making notification language consistent with language authorizing the annexation.