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1998 Through 2006 Bills Impacting Energy Production and Transportation

The following summaries are of bills enacted during the 1998 through 2006 Legislative Sessions that have a direct impact on entities that produce and transport energy and certain fuels.

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 to 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 to property or rights in tenancy.) This provision also includes shareholders in the statutory list of owners of a nonprofit public utility.

2000

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 would still be subject to rate proceedings before the Commission.

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 would be required; the information to be contained in the utility's siting application; and the requirements governing the Commission'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, 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, which pertains to public utility loans or credit pledged to persons or companies having an affiliated interest in the company. KSA 66-1213 required a utility subject to the jurisdiction of the KCC to apply to the Commission for approval before the utility may loan money or pledge its credit to its affiliate.

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

Although a utility will no longer have to receive the Commission's approval as a precondition for making a loan or pledging credit to an affiliate, the utility must still report to the Commission the terms and conditions of the loan or pledge. The utility must notify the Commission within ten days after making the loan or pledging the credit.

2001

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 that 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 only 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 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 Kansas Development Finance Authority 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 which is 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 in this bill, 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 the Kansas Development Finance Authority 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 any municipality 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 Commission 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. Any amount by which the allowed portion of the credit exceeds the business' total Kansas tax liability in a given tax year can be carried forward.

Any expenditures that are 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 modifies the section of law dealing with 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 would end. 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 production or expanded production of ethyl alcohol. This incentive is to be for facilities which have new production of at least 5,000,000 gallons. No incentive would be available for new or expanded production over 15,000,000 gallons. The incentive on expanded or new production would be \$.075 per gallon and would be 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 would 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 provisions of the agricultural ethyl alcohol incentive are to expire on July 1, 2011.

2002

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 that pose 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.

The amendments provide, whenever a city proposes to annex land located within the certified territory of a retail electric supplier, the city shall (1) provide notice to the retail electric supplier; (2) negotiate for the issuance of a franchise agreement with the retail electric supplier certified to serve the annexed area; and (3) 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 that serve 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 civil penalty of not more than \$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 could then be added to the end-user customer's bill, statement, or invoice as a surcharge equal to the pro rata 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 which are 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 is also 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 that 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, would not be considered 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 would 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 for providing rural gas service. 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 from the State Corporation Commission (KCC) a determination 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 with the KCC a petition 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, 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 would be deemed to have been approved by the KCC and would be 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 determination by the KCC 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 (1) 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 (2) 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 Kansas Development Finance Authority (K DFA) 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 creation of a cooperative by five or more persons. The purpose of cooperatives created under the act is to generate electricity from renewable resources. All such cooperatives would 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, at most, 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 as are other electric utilities. Further, the Commission 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. That fee would 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 specifically prohibited from reselling electricity to their providers of last resort.

Transmission Line Financing

The bill also authorizes the Kansas Development Finance Authority to issue revenue bonds to pay for construction, upgrading, and acquisition of electric transmission lines, and certain related expenses. Transmission lines that are 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 that is 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 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 can subsequently 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 Commission 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 implemented 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 as confidential information regarding the amount and method of cost recovery;
- 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 does not specifically prohibit the addition of these charges, would 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 that 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 10-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 report provided in 2004 to these committees is to include a review of propane safety policies, statutes, rules and regulations in Kansas and adjoining states and is to include recommendations the council deems appropriate for policy, statutory, or regulatory changes in Kansas to improve propane safety.

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 could 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 could be used for purchase of propane products and equipment or replacement of propane products and equipment, including through cost-share programs, for Kansas consumers, except that 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 could be expended only for the purposes of the legislation and could 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 could 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 State Corporation Commission 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 enacts new law and amends prior law to provide incentives to increase electric transmission and generating capacity.

New provisions:

- Authorize the Kansas Development Finance Authority (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 Kansas Corporation Commission (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 which is at least five miles in length and which 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 be any transmission line that is 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 construction or upgrade of 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 Kansas Development Finance Authority 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 postsecondary educational institutions or faculty members of such institution. Any revenue bonds issued by the Kansas Development Finance Authority 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 benefitting 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 that when a recorded deed or conveyance covering mineral or royalty rights purports to include such rights that are 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 that 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 that is 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 damages in the sum of up to \$10,000 per title affected, and reasonable attorney's fee. 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 will not relieve the grantee or grantor from damages or other responsibilities imposed by the bill.

Kansas Economic Growth Act

HB 2647 creates the Kansas Economic Growth Act. The bill also creates or amends ten acts as outlined below.

Bioscience Authority Act. The bill enacts the Bioscience Authority Act and creates the Kansas Bioscience Authority, governed by an 11-member Board of Directors. Nine members will be voting members representing the general public who demonstrate leadership in finance, business, bioscience research, plant biotechnology, basic research, health care, legal affairs, bioscience manufacturing or product commercialization, education, or government. In addition, one member of the Board is to be an agricultural expert who is recognized for outstanding knowledge and leadership in the field of bioscience. Seven voting members of the Board must be Kansas residents. The Governor, the Speaker of the House, and the President of the Senate will each appoint two Board members, and the House Minority Leader, Senate Minority Leader, and Kansas Technology Enterprise Corporation (KTEC) will each appoint one member. No more than three voting members of the Authority could be appointed from any one congressional district. Two non-voting members of the Board are to be representing state research universities and have research expertise. The voting members are subject to Senate confirmation and will serve four-year terms after conclusion of the initial term, with no more than three consecutive four-year terms. All members of the Board and all officers of the Authority will be required to file a written statement of substantial interest.

The Board members will serve with compensation and will be required to meet at least four times per year. The Board members will appoint a president to serve as the Chief Executive Officer of the Authority. In executive session of the Board, the members are prohibited from taking action on any matter heard in an executive session. In addition, the Chairperson, the Vice-Chairperson, the Secretary, and two additional members of the Board to be chosen by the Chairperson from the remaining members will be the Executive Committee, which may transact business of the Authority. The Executive Committee membership must be voting members.

The Bioscience Authority is to be headquartered in the county with the highest number of bioscience employees associated with bioscience companies. The Authority will continue so long as the Authority has bonds outstanding unless adequate provisions are made for the payment or retirement of the Authority's debts or obligations. In addition, nothing in the Act will be construed to limit the constitutional powers of the Legislature.

The Authority, with state universities, will identify and recruit eminent and rising star scholars; jointly employ personnel to assist or complement eminent and rising star scholars; determine types of facilities and research; facilitate integrated bioscience research; and provide matching funds for federal grants.

The powers of the Authority will include:

- Oversee the commercialization of bioscience intellectual property created by eminent and rising star scholars;
- Own and possess patents, proprietary technology, and entering into contracts for commercialization of the research;
- Incur indebtedness and enter into contracts with Kansas Development Finance Authority (KDFFA) for bonding to construct state-of-the art facilities owned by the Authority;
 - Neither the State of Kansas nor KDFFA will be liable for the bonds of the Authority;
 - Employ as many employees as it requires; however, the employees are not considered state employees;
 - Allow the establishment of benefits for employees such as a health insurance plan, retirement plans, death and disability benefits, and affiliate with Kansas Public Employees Retirement System.
- Purchase, lease, trade, and transfer property; (Architecture and construction requirements similar to those affecting the research universities research facilities also will apply.)
- Solicit and study business plans and proposals;
- Establish a contractual relationship with KTEC and National Institute for Strategic Technology Acquisition and Commercialization (NISTAC) for the first five years of operation; and
- Require a repayment agreement for any bioscience company that receives grants, awards, tax credits or any other financial assistance, including financing for any bioscience development project, if the company relocates operations associated with the funding outside Kansas within 10 years after receiving such financial assistance. The Authority will be required to specify the terms of the repayment obligation and the amount to be repaid.

The Authority will be prohibited from creating any political action committee or contributing to any political action committee. Finally, the terms bioscience, biotechnology, and life sciences could not be construed to include: induced abortion in humans, performed after the date of enactment of this Act, or the use of cells or tissues derived therefrom; and any research, the federal funding of which would be contrary to federal laws that are in effect on the date of enactment of this Act.

Eminent domain would not be allowed to be used to secure agricultural land for a bioscience project. Finally, the Authority would be subjected to review by Kansas, Inc., to evaluate and report on the effectiveness of Authority activities.

Emerging Industry Investment Act. The bill creates the Bioscience Development Investment Fund which will not be a part of the State Treasury. Funds in the Bioscience Development Investment Fund would belong exclusively to the Authority. The Secretary of Revenue and the Authority will establish the base year of taxation for all bioscience companies and all state universities conducting bioscience research in the state.

The Secretary of Revenue, the Authority, and the Board of Regents will establish the number of bioscience employees associated with state universities and report annually and determine the incremental increase from the base annually for the following 15 years from the effective date of the Act. All of the incremental state taxes generated by the growth of bioscience companies and research institutions over and above the base taxation year will go into the Fund. The baseline amount of state taxes will go to the State General Fund each year. The Bioscience Development Investment Fund will be used to fund programs and repay bonds.

Bioscience Development Financing Act. The bill allows creation of tax increment financing districts for bioscience development. One or more bioscience development projects could occur within an established bioscience development district. The process for establishing the district will follow the tax increment financing statutes. However, no bioscience development district can be established without the approval of the Authority. The bill allows counties to establish bioscience development districts in unincorporated areas. KDFRA may issue special obligation bonds to finance a bioscience development project. The bonds will be paid with ad valorem tax increments, private sources, contributions, or other financial assistance from the state and federal government. In addition, the bill creates the Bioscience Development Bond Fund which will be managed by the Authority and not be part of the State Treasury. A separate account will be created for each bioscience development district (BDD) and distributions will pay for the bioscience development project costs in a BDD.

Bioscience Tax Investment Incentive Act. The bill also makes additional cash resources available to start-up companies. The bill creates the Net Operating Loss (NOL) Transfer Program. The Program will allow the Bioscience Authority to pay up to 50 percent of a bioscience company's Kansas NOL during the claimed taxable year. The Program will be managed by the Kansas Department of Revenue and will be capped at \$1.0 million for any one fiscal year.

Bioscience R & D Voucher Program Act. The bill establishes the Bioscience R & D Fund in the State Treasury. The Fund could receive state appropriations, gifts, grants, federal funds, revolving funds, and any other public or private funds. The State Treasurer will disperse funds with the consent of the Bioscience Authority Chairperson. The Program requires that any Kansas companies conducting bioscience research and development apply to the Authority for a research voucher. After receiving a voucher, the company then locates a researcher at a Kansas university or college to conduct a directed research project. At least 51 percent of voucher award funds will be expended with the university in the state under contract and could not exceed 50 percent of the research cost. The maximum voucher funds awarded could not exceed \$1.0 million, each year for two years, and not to exceed 50 percent of the research costs. The company will be required to provide a one-to-one dollar match of the project award for each year of the project. A Bioscience Research and Development Voucher—Federal Fund is established to receive any federal funding.

Bioscience Research Matching Funds Act. The bill further establishes the Bioscience Research Matching Fund to be administered by the Authority. Recipients must be a bioscience research institution and are encouraged to jointly apply for funds. The funds will be used to promote bioscience research and to recruit, employ, fund, and endow bioscience faculty, research positions and scientists at universities in Kansas. Application for the matching funds will be made to the Authority.

Kansas Center for Entrepreneurship. The bill establishes the Kansas Center for Entrepreneurship within the Department of Commerce. The Secretary of Commerce will enter into a contract for the operations of the Center. An 11- member Board of Directors will be appointed by the Secretary of Commerce and specific qualifications for Board membership are outlined in the bill.

The purpose of the Center is to increase seed capital for entrepreneurs, especially those in distressed and rural communities; work with the Kansas Board of Regents and the Kansas Board of Education to create training and course work in entrepreneurship; and provide a resource center clearinghouse and referral source which is to include a website and a toll-free telephone number.

The bill also creates the Kansas Community Entrepreneurship Fund (KCEF), which is to receive state funds, donations, and gifts from any source. The Center will administer the fund under guidelines established by the Secretary of Commerce and the funds would be used for awards to regional and community organizations that provide seed capital to qualified entrepreneurs, especially those located in distressed and rural communities in Kansas. The Fund will not be subject to appropriation. A maximum of 10 percent of the fund each year could be used for the operation of the Center.

A new tax credit for entrepreneurship in distressed and rural communities also is established by the bill. Taxpayers that donate to the KCEF could claim a 50 percent tax credit of the amount donated. The first year that a tax credit could be claimed is 2006 and will be limited to a total amount of \$2.0 million for any one fiscal year. In addition, the minimum amount of investment will be \$250 to receive the credit. The Center and the Department of Commerce will control the distribution of the credits to investors.

After the third year of operation, the Center is to be reviewed by Kansas, Inc. for evaluation of the program in meeting its goals and objectives, and cost effectiveness of the program.

The Kansas Investments in Major Projects and Comprehensive Training Act (IMPACT). The bill amends IMPACT to allow the Secretary of the Department of Commerce to make direct investments in educational and related workforce development institutions. The bill also increases the Secretary's ability to invest in capital requirements of major facility expansions from 10.0 percent to 20.0 percent of IMPACT funds.

The Rural Business Development Tax Credit. The bill also establishes a rural business development tax credit. State income tax credits will be awarded to seven designated regional organizations to use to encourage individuals, businesses, financial institutions, and insurance companies to donate to regional foundations. The bill defines a "regional foundation" as an organization that demonstrates capacity to provide economic development services to various regions of the state. The Secretary of Commerce, with assistance of the Secretary of Revenue, will designate an organization as a regional foundation.

Over a three-year period, each region will receive \$1.0 million of tax credits, or a total of \$7.0 million statewide. A tax credit of 50 percent of the donation will be available under this program. The minimum donation is \$250. Any credits not sold by a date to be specified by the Department of Commerce would be reclaimed by the Department and redistributed to other regions that had used all of their credits.

The Kansas Angel Investor Tax Credit Act. The bill establishes the Kansas Angel Investor Tax Credit Act. An accredited investor will be allowed a 50 percent tax credit not to exceed \$50,000 of cash investment in a qualified Kansas business and limited to five such cash investments. The tax credit will be made available beginning January 1, 2005 with a cap of \$2.0 million per year. The

last year to receive a tax credit under the provisions of the bill will be 2016. The cumulative aggregate amount of tax credits allowed for the ten-year period will be \$20.0 million.

A qualified Kansas business will be certified KTEC. An accredited investor will be an accredited investor as defined by the U.S. Securities and Exchange Commission Rule 501 Regulation D and is incurring Kansas income tax. The tax credit could be sold if the investor is not subject to Kansas taxation and only the full credit for any one investment may be transferred. KTEC will be allowed to recover administration costs from the accredited investor or qualified Kansas business.

The bill requires repayment of state investments if the business no longer qualifies or moves out of the state within 10 years and abolishes the Kansas Certified Capital Formation Company Act.

The Kansas Downtown Redevelopment Act. The bill further creates the Kansas Downtown Redevelopment Act. The Secretary of Commerce will approve applications from cities or counties for the designation of downtown redevelopment areas that also will receive a rebate of property tax collected on the properties which have undergone approved improvements. The criteria the Secretary will use when reviewing the applications includes:

- The proposed redevelopment area is located in a well-defined, core commercial district of the city;
- The structures located within the proposed redevelopment area have a vacancy rate that exceeds 15 percent; or
- The average appraised valuation of the properties located within the proposed area has not increased by more than 15 percent in the past 10 years.

The property owner will be required to submit a written application to the governing body of the city to request the rebates. The real property approved for the tax rebates will be assessed and taxed as if it had not been approved. A rebate for five years will be made available to the property owner of the incremental tax increase between the base year, prior to the improvements, and the new assessed evaluation. During the sixth year, 80 percent of the tax increment will be subject to rebate. For the seventh, eighth, and ninth years, the percentage of the tax increment that will not be subject to rebate will be a 20 percent increase per year. Finally, in the tenth year, no rebate will be awarded.

2005

Corporation Commission Participation in Regional Transmission Organization

HB 2407 enacts a new statute authorizing the Kansas Corporation Commission's 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 Commission's regulatory

jurisdiction nor its authority to appeal decisions of an RTO. The bill specifically would not relieve the Commission 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 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 that an emergency could be declared only for the purpose of exempting drivers of utility service vehicles from limitations on hours of service prescribed by regulations of the Kansas Corporation Commission (KCC). The exemption would be further limited by federal regulations pertinent to such exemptions.

The Adjutant General would be 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:

- Minimum size requirement for energy agencies' boards of directors and the requirement that board members reside within one of the participating cities;
- Requirement that energy agencies abide by state budget and cash-basis laws; and
- 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 (Authority). The purpose of the Authority 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. The Authority 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 Kansas Corporation Commission 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 Corporation Commission for implementation of the Act.

Finally, the bill amends prior law to authorize the Kansas Corporation Commission (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 Transmission Authority 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, the Authority has broad, general authority including the ability to adopt rules and regulations. The Authority 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, the Authority may contract for maintenance and operation of transmission facilities. The Authority cannot directly operate or maintain transmission facilities. The Authority will continue in existence until terminated by law.

Other specific powers of the Authority include the ability to enter into contracts with the Kansas Development Finance Authority (KDFA) which is authorized to issue bonds and provide financing for construction, upgrading, or repair of the Authority's transmission facilities and acquisition of 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 acquisition of 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 Kansas

Corporation Commission (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.

The Authority will recover its costs through tariffs of the Southwest Power Pool (SPP) Regional Transmission Organization. If all costs are not recovered through SPP tariffs, the Authority will recover the remainder of its costs through assessments against utilities that benefit from Authority 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

The Authority 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.

The Authority 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 the Authority of their intention and ability to perform the acts, finance, and construct the facilities, or provide the service contemplated by the Authority. 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, the Authority may proceed with the project. If a private entity begins, but fails to make satisfactory progress toward completion of a project, the Authority 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

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

The Authority 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

The Authority is not required to pay Kansas income tax and its purchases would be exempt from sales tax. The Authority's transmission facilities would be 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 the Authority. Those entities will be reimbursed by the Authority. State agencies and local governments also are authorized to lease, lend, grant, or convey land to the Authority 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 the Authority 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.

Transmission Authority 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 the Authority.

Transmission Authority Board Conflicts of Interest

Board members and staff are required to disclose in writing any interest in contracts or transactions with the Authority. No Authority member or staff with an interest in an Authority 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 the Authority who have a substantial interest in contracts or transactions with the Authority 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 Corporation Commission 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 that the project will provide measurable economic benefit to Kansas electric consumers that would exceed 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 cut off 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 that a good-faith basis for the curtailment did not exist and that 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 nonindustry interests. The nonindustry 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 could

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 an 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)).
- Kansas Development Financing Authority (K DFA) 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 would continue for 10 years after the completion of construction or installation. The property tax exemption for ICGPP projects would continue 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 would be 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 could 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 would be 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 either:

- 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 that 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. On and after July 1, 2020, the tax on E85 fuels \$.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 that typically contains 85 percent ethanol by volume, but at a minimum must contain 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 that 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 Kansas Corporation Commission (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 and 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 United States, this 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 could 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 no 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) which will be created by the bill in the state treasury.

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. Also, 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 producer 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 pro rata basis.

Finally, the bill provides for a sunset of the incentive program on July 1, 2016.