

**SENATE BILL No. 374**

By Committee on Utilities

2-11

1 AN ACT creating the energy efficiency investment act.  
2  
3 Be it enacted by the Legislature of the State of Kansas:  
4 Section 1. (a) As used in this section:  
5 (1) "Commission" means the state corporation commission;  
6 (2) "demand response" means measures that decrease peak demand or  
7 shift demand to off-peak periods of time;  
8 (3) "demand-side program" means any program conducted by ~~the~~  
9 ~~(A) An electric utility to modify reduce or shift the net consumption of~~  
10 ~~electricity by a retail electric customer; or (B) a natural gas utility to~~  
11 ~~reduce or shift the net consumption of natural gas by a retail gas customer.~~  
12 "Demand-side program" may include, but shall not be limited to: (A)  
13 Energy efficiency measures; (B) load management; (C) demand response;  
14 and (D) interruptible or curtailable load;  
15 (4) ~~electric public utility" means any public utility, as defined in~~  
16 ~~K.S.A. 66-104, and amendments thereto, which generates or sells~~  
17 ~~electricity;~~  
18 (5) "energy efficiency" means measures that reduce the amount of  
19 ~~electricity energy~~ required to achieve a given end use; and  
20 (6) "total resource cost test" means a test that compares the sum of  
21 ~~avoided utility costs and avoided probable environmental compliance costs~~  
22 ~~to the sum of all incremental costs of end-use measures that are~~  
23 ~~implemented due to the demand-side program~~  
24 (5) "public utility" means any public electric or gas utility, as defined  
25 in K.S.A. 66-101, and amendments thereto, but does not include a  
26 municipally-owned electric or gas utility or an electric or gas cooperative  
27 that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d,  
28 and amendments thereto.  
29 (b) It is the goal of the state to promote the implementation and  
30 ~~expansion~~ of cost-effective demand-side programs and investments in  
31 Kansas. It shall be the policy of the state to value demand-side program  
32 investments equal to traditional investments in supply and delivery  
33 infrastructure as much as is practicable, but public utilities shall not be  
34 required to offer, implement or continue demand-side programs.  
35 (c) (1) (A) ~~Electric public utilities shall submit demand-side program~~  
36 ~~plans and cost-recovery mechanisms to the commission for approval~~

1 pursuant to this section. The commission shall either approve or  
2 disapprove in writing such permit public utilities to implement  
3 commission-approved demand-side programs and cost recovery  
4 mechanisms submitted pursuant to this section. The commission shall  
5 issue an order on any demand-side program plan and cost-recovery  
6 mechanisms as submitted within 120 180 days after submission to the  
7 commission. The commission may extend the approval period to 240 for  
8 good cause. Consistent with K.S.A. 66-117(c), and amendments thereto, if  
9 the commission fails to issue a final order on such program plan and cost-  
10 recovery mechanism within 120 180 days, or 240 days if the approval  
11 period was extended by the commission for good cause, such program  
12 plan and cost-recovery mechanism shall be deemed approved as submitted  
13 by the commission and shall take effect on the proposed effective date  
14 contained in such plan.

15 (B) The commission may approve, with modifications, an electric  
16 public utility's proposed program plan submitted for approval. If the  
17 commission approves a program plan with modifications, including  
18 modifications to the electric public utility's proposed cost-recovery  
19 mechanism, the electric public utility shall either accept such  
20 modifications and implement the modified plan or reject the modified  
21 plan. The electric public utility may submit a new plan to the commission  
22 for approval. The public utility and the commission shall both have the  
23 independent authority to accept or reject any proposed establishment,  
24 continuation or modification of a demand-side program, portfolio of  
25 programs or associated cost-recovery or incentive mechanisms, but no  
26 such establishment, continuation or modification of such programs or  
27 mechanisms shall take effect without the approval of both the utility and  
28 the commission. If the public utility rejects modifications to a demand-side  
29 program or portfolio of programs approved by the commission, including  
30 modifications to the cost-recovery mechanism, the public utility shall not  
31 be required to implement the program or mechanism.

32 (C) If the plan is not approved, the commission shall provide  
33 justifications for such disapproval and allow the electric public utility an  
34 opportunity to modify and re-submit the plan for approval. Upon final  
35 ruling of the commission order, the public utility has the right to reconsider  
36 and may withdraw its plan during the reconsideration period, which shall  
37 not exceed 30 calendar days from the date the final order was issued.  
38 Pursuant to K.S.A. 77-613, and amendments thereto, the time period for  
39 filing a petition for judicial review shall not begin until the completion of  
40 any such reconsideration period.

41 (D) In determining making its decision whether or not to approve the  
42 proposed program, the commission shall consider the total resource cost  
43 determine the appropriate test for evaluating the cost-effectiveness of the

1 ~~demand-side program. Pilot programs.~~ Programs targeted to low-income  
2 customers or general education campaigns do not need to meet a cost-  
3 effectiveness test, so long as the commission determines that the program  
4 or campaign is in the public interest and is supported by a reasonable  
5 budget in the context of the overall budget. ~~Nothing in this subsection shall~~  
6 ~~preclude the commission from approving a demand-side program that does~~  
7 ~~not meet the test if the excess costs of the demand-side program are funded~~  
8 ~~by the customers participating in the demand-side program or through tax~~  
9 ~~or other governmental credits or incentives specifically designed for such~~  
10 ~~purpose.~~

11 (2) The commission shall allow recovery of the reasonable and  
12 prudent costs associated with delivering ~~cost-effective commission-~~  
13 ~~approved~~ demand-side programs, so long as the program: (A) Results in  
14 energy or demand savings; and (B) is beneficial to customers in the  
15 customer class for which the programs were implemented, regardless of  
16 whether the program is utilized by all customers in such class. The fact  
17 that a commission-approved program proves not to be cost-effective is not  
18 by itself sufficient grounds for disallowing cost recovery. Programs  
19 determined to be non-cost-effective, other than programs targeted to low-  
20 income customers or general education campaigns, shall be ~~modified to~~  
21 ~~address deficiencies or terminated following such determination.~~

22 (d) (1) ~~To comply with this section, the commission shall~~ may allow  
23 cost recovery mechanisms that further encourage investments in demand-  
24 side programs. Such ~~investments cost recovery mechanisms~~ may include,  
25 but shall not be limited to: (A) Capitalization of investments in and  
26 expenditures for demand-side programs; (B) recovery of lost revenue  
27 associated with demand-side programs; (C) decoupling; (D) rate design  
28 modifications; (E) accelerated depreciation on demand-side investments;  
29 and (F) allowing the public utility to retain a portion of the net benefits of  
30 a demand-side program for its shareholders.

31 (2) In determining rates for electricity as part of a demand-side  
32 program, the commission shall fairly apportion the costs and benefits of  
33 such programs to each customer class.

34 (e) To achieve the goals of this act, the commission shall:

35 (1) Provide timely cost recovery for electric public utilities;

36 (2) ensure that the financial incentives for an electric public utility are  
37 aligned with helping such utility's customers use energy more efficiently  
38 and in a manner that sustains or enhances such customers' incentives to use  
39 energy more efficiently;

40 (3) provide timely earnings opportunities ~~for public utilities~~  
41 ~~associated with cost-effective, measurable and verifiable demand-side~~  
42 ~~program savings;~~

43 (4) provide oversight and approval for utility-specific settlements and

1 tariff provisions; and

2 (5) provide independent evaluation of demand-side programs, as  
3 deemed necessary by the commission.

4 (f) On or before ~~March~~ ~~May~~ 31 of each year, each electric public  
5 utility ~~that has implemented a demand-side program or portfolio of~~  
6 ~~programs~~ shall submit an annual report to the commission describing the  
7 results of such demand-side programs for the previous calendar year. The  
8 report shall include:

9 (1) Program expenditures, including incentive payments;

10 (2) peak demand and energy savings impacts and the techniques used  
11 to estimate such impacts;

12 (3) avoided costs and the techniques used to estimate such costs;

13 (4) the estimated cost-effectiveness of the demand-side programs; ~~and~~

14 (5) the net economic benefits of the demand-side programs; ~~and~~

15 ~~(6) a comparison of the commission authorized program budget to~~  
16 ~~actual costs.~~

17 ~~(g) The electric public utility shall have the authority to terminate any~~  
18 ~~existing demand-side program upon filing notice of such termination with~~  
19 ~~the commission.~~

20 ~~(h) The commission shall may~~ adopt rules and regulations for the  
21 administration of this act ~~on or before December 31, 2014.~~

22 ~~(i) (h)~~ This section shall be known and may be cited as the Kansas  
23 energy efficiency investment act.

24 Sec. 2. This act shall take effect and be in force from and after its  
25 publication in the statute book.