

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2101

As Amended by House Committee on Energy
and Environment

Brief*

HB 2101 would enact an Interstate Transmission Line Siting Compact (Compact), a national structure under which states could cooperate on a regional basis to facilitate siting of interstate power lines. The Compact would become effective and binding upon enactment by a minimum of three states, and thereafter would be binding on any other member state upon enactment of the Compact into law by that state. A member state could withdraw from the Compact by specifically repealing the statutes that enacted the Compact.

Purpose of the Compact (Article I)

Article I of the Compact indicates siting electric transmission lines across state borders and federal lands can be inefficient and redundant because of the current, multi-year application process by separate and equal jurisdictions. This process complicates efforts to increase grid reliability and security, provide consumers the lowest cost electricity possible, and develop economic opportunities.

The stated goal of the Compact is to balance competing interests, provide a mechanism to resolve differences, bring interested parties together, and move transmission projects forward. The Compact is intended to:

- Simplify and standardize the application and filing process;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Create a transparent, streamlined process for review and decision making;
- Allow states to consider regional benefits;
- Minimize impediments and delays in siting;
- Promote regional decision making on line siting while providing opportunity for public input; and
- Create a forum for federal agencies and tribes to be part of the siting review process simultaneously with states.

Organizational Structure (Article III)

The Compact would create three levels of organization.

A State Project Review Panel (SPRP) within each state would coordinate the views of different agencies and interests in that state.

A Combined Multistate Siting Authority (CMSSA) would be made up of the members of each state project review panel (SPRP) in the states affected by a particular proposed project. The CMSSA would have the authority to cooperatively site transmission lines in the affected states.

An Interstate Coordinating Compact Commission would provide administrative support and rulemaking capability. States that approve the Compact enabling legislation would have a representative on the Commission. The Commission is discussed more fully later.

Siting Application and Review Process (Articles IV - VI)

A utility proposing to build a transmission line could submit an application through the Compact, or could apply for

siting authority from each state under applicable state procedures.

An application through the Compact to site a transmission line across multiple states would require only one application, which could be submitted to any state that is a member of the Compact and in which the line is proposed to be built. That state would convene a CMSSA made up of the other states in which the line is proposed to be built and would distribute the application to those states.

The first CMSSA hearing must occur within 90 days of the filing, for the purpose of assessing the application for completeness. The second CMSSA hearing, to be held no more than 30 days after the initial decision, would assess the merits of the application, including, but not limited to, the proposed route, regional and national energy needs, and costs. The CMSSA would be required to hold at least one public comment hearing in each of the involved member states. The hearings must be completed within 120 days of the filing of the application.

***Siting Approval Process
(Article VII)***

The CMSSA would be required to hold an evidentiary hearing, and issue conditional or final approval based on the record within 270 days of the filing of the application, unless the applicant and the CMSSA agree to a different timeline. The CMSSA would be required to outline the required actions in instances where conditional approval was granted.

All decisions of the CMSSA would be based on majority vote, with each involved state having one vote. A state, based upon the rules of the involved states, may alter the route for the transmission line within its boundaries by assuming incremental costs.

***Administrative and Judicial Review
(Article VIII)***

Any person aggrieved by an action of the CMSSA would be entitled to an administrative hearing before the Interstate Coordinating Compact Commission. After exhaustion of such remedy, the person would have the right to judicial review of the Commission's final action in U.S. district court, provided such action is commenced within 90 days.

The Commission could initiate actions in federal court to compel compliance with provisions of the Compact. Each involved state could issue orders within its jurisdiction and initiate actions to compel compliance with the provisions of its statutes and regulations adopted to implement the authorities contemplated by the compact.

Any aggrieved person, involved state, or the Commission could take civil action to compel a person or involved state to comply with the Compact if such person or state undertakes a prohibited or unapproved siting of multistate electric transmission lines.

***Interstate Coordinating Compact Commission
(Articles IX - XII)***

The Commission would be made up of one voting representative from each member state (states that have adopted a transmission line siting Compact and enacted enabling legislation for that Compact). That representative would be the state's Compact commissioner.

A majority of the total member states would constitute a quorum for transaction of business. The Commission may include *ex officio*, non-voting representatives who are member of interested organizations, such as tribes, regional transmission organizations and federal agencies.

The Commission would be required to meet at least once each calendar year. After eight states join the Compact, an executive committee may be established, which would have the power to act on behalf of the Commission when the Commission is not in session and which would oversee day-to-day activities of administration of the Compact, including enforcement and compliance with its provisions.

The Commission would adopt bylaws, annually elect or appoint officers, and promulgate rules for administration of the Compact to effectively and efficiently achieve the purposes of the Compact. Rules would be subject to a petition for judicial review in the U.S. district court.

The Commission would have powers including, but not limited to, the following:

- Provide dispute resolution among member states;
- Issue advisory opinions concerning interpretation of the Compact;
- Enforce compliance with the Compact, and with rules and bylaws of the Commission;
- Purchase and maintain insurance and bonds;
- Establish and appoint committees;
- Hire staff, fix their compensation, and define duties;
- Establish a budget; and
- Report annually to the legislature and governors of the member states concerning activities of the Commission during the previous year.

***Oversight, Enforcement, and Dispute Resolution
(Article XIII)***

The executive, legislative and judicial branches of state government in each member state would be required to enforce the Compact.

If the Commission determines a member state has defaulted on its responsibilities under the Compact, the Commission would be required to provide written notice to the defaulting state and other member states regarding the nature of the default, the means of curing the default, and any action taken by the Commission. The Commission would be required to provide remedial training and technical assistance regarding the default, and could assess fines, fees and costs to the defaulting state in amounts deemed reasonable by the Commission.

Any state that was suspended or terminated would be responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination. The Commission would not bear any costs relating to any state found to be in default or which had been suspended or terminated from the Compact. A defaulting state could appeal an action of the Commission in federal court.

The Commission, if requested by a member state or a state project review panel, would attempt to resolve disputes which are subject to the Compact and which may arise among member states, between member and non-member states and between member states and transmission applicants. The Commission would promulgate a rule providing for both mediation and binding dispute resolution, as appropriate.

***Finance
(Article XIV)***

The Commission could accept contributions and other funding from federal agencies, Compact states, and other

sources to fund initial operation. The Commission would collect a filing fee equal to 0.5 percent of the filing fee paid to the CMSSA by the applicant for each proposed line, to cover the cost of operations and activities of the Commission and its staff. The Commission would adopt an annual budget that would be fully funded by the member states that would bear ultimate responsibility.

***Withdrawal, Dissolution, and Binding Effect
(Articles XVI - XVII)***

A member state could withdraw from the Compact by specifically repealing the statutes that enacted the Compact. Withdrawal would not take effect until the latter of either the final determination of a pending application involving that state, or one year after the effective date of the repeal of the statute.

The Compact would be dissolved when the withdrawal or default of a member state reduces membership in the Compact to one state.

All member states' laws conflicting with the Compact would be superseded to the extent of the conflict. All lawful action of the Commission would be binding on the member states.

Background

The bill was introduced by the House Committee on Energy and Environment at the request of Representative Sloan.

Representative Sloan testified in support of the bill in House Energy and Environment. Written support was received from the Council of State Governments and Clean Line Energy Partners. A representative of ITC Great Plains provided neutral testimony on the bill. There was no testimony in opposition.

The House Committee made a technical amendment to the bill.

The fiscal note submitted by the Division of the Budget for the original bill indicates passage of the bill would have no fiscal effect for the Citizens Utility Ratepayer Board or the Kansas Corporation Commission.