

House Substitute for SENATE BILL No. 91

AN ACT concerning renewable energy; relating to the renewable energy standards act, electric generation standard; relating to property tax; concerning exemptions for property used for renewable energy resources; relating to property tax on public utilities, definitions and exceptions; amending K.S.A. 2014 Supp. 66-1256, 66-1257, 66-1259, 79-201, 79-223 and 79-5a01 and repealing the existing sections; also repealing K.S.A. 2014 Supp. 66-1258, 66-1260, 66-1261 and 66-1262.

Be it enacted by the Legislature of the State of Kansas:

Section 1. On and after January 1, 2016, K.S.A. 2014 Supp. 66-1256 is hereby amended to read as follows: 66-1256. (a) K.S.A. 2014 Supp. 66-1256 through 66-1262, 66-1257 and 66-1259, and amendments thereto, shall be known and may be cited as the renewable energy standards act.

(b) *The legislature declares that it is in the public interest to promote renewable energy development in order to best utilize the abundant natural resources found in this state. There is hereby established a renewable energy standard for the state. The renewable energy standard shall be a voluntary goal that 20% of a utility's peak demand within the state be generated from renewable energy resources by the year 2020.*

Sec. 2. On and after January 1, 2016, K.S.A. 2014 Supp. 66-1257 is hereby amended to read as follows: 66-1257. As used in the renewable energy standards act:

(a) "Affected utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto, but does not include any portion of any municipally owned or operated electric utility.

(b) "Commission" means the state corporation commission.

~~(c) "Net renewable generation capacity" means the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.~~

~~(d) "Peak demand" means the demand imposed by the affected utility's retail load in the state.~~

~~(e) "Renewable energy credit" means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the state corporation commission.~~

~~(f)(d) "Renewable energy resources" means net renewable generation capacity from:~~

- (1) Wind;
- (2) solar thermal sources;
- (3) photovoltaic cells and panels;
- (4) dedicated crops grown for energy production;
- (5) cellulosic agricultural residues;
- (6) plant residues;
- (7) methane from landfills or from wastewater treatment;
- (8) clean and untreated wood products such as pallets;
- (9) (A) existing hydropower;
- (B) new hydropower;
- (10) fuel cells using hydrogen produced by one of the above-named renewable energy resources; and

(11) energy storage that is connected to any renewable generation by means of energy storage equipment including, but not limited to, batteries, fly wheels, compressed air storage and pumped hydro; and

~~(12) other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to K.S.A. 2014 Supp. 66-1262, and amendments thereto.~~

Sec. 3. K.S.A. 2014 Supp. 66-1259 is hereby amended to read as follows: 66-1259. (a) The commission shall allow affected utilities to recover reasonable costs incurred to meet the new or committed to be incurred as a result of compliance with the renewable energy resource requirements required in the renewable energy standards act K.S.A. 2014 Supp. 66-1258, prior to its repeal. All rules and regulations and orders of the state corporation commission that relate to allowing a utility to recover costs incurred to meet such requirement, and that are in effect on June 30, 2015, shall continue to be effective. The commission shall allow affected utilities to recover reasonable costs incurred as a result of meeting the voluntary 20% goal in K.S.A. 2014 Supp. 66-1256, and amendments thereto.

(b) *Nothing in this act shall be construed to impair any existing contracts, leases or agreements.*

Sec. 4. K.S.A. 2014 Supp. 79-201 is hereby amended to read as follows: 79-201. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All buildings used exclusively as places of public worship and all buildings used exclusively by school districts and school district interlocal cooperatives organized under the laws of this state, with the furniture and books therein contained and used exclusively for the accommodation of religious meetings or for school district or school district interlocal cooperative purposes, whichever is applicable, together with the grounds owned thereby if not leased or otherwise used for the realization of profit, except that: (a) (1) Any school building, or portion thereof, together with the grounds upon which the building is located, shall be considered to be used exclusively by the school district for the purposes of this section when leased by the school district to any political or taxing subdivision of the state, including a school district interlocal cooperative, or to any association, organization or nonprofit corporation entitled to tax exemption with respect to such property; and (2) any school building, together with the grounds upon which the building is located, shall be considered to be used exclusively by a school district interlocal cooperative for the purposes of this section when being acquired pursuant to a lease-purchase agreement; and (b) any building, or portion thereof, used as a place of worship, together with the grounds upon which the building is located, shall be considered to be used exclusively for the religious purposes of this section when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 et seq., and amendments thereto, or when used to house an area where the congregation of a church society and others may purchase tracts, books and other items relating to the promulgation of the church society's religious doctrines.

Second. All real property, and all tangible personal property, actually and regularly used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes, including property used exclusively for such purposes by more than one agency or organization for one or more of such exempt purposes. Except with regard to real property which is owned by a religious organization, is to be used exclusively for religious purposes and is not used for a nonexempt purpose prior to its exclusive use for religious purposes which property shall be deemed to be actually and regularly used exclusively for religious purposes for the purposes of this paragraph, this exemption shall not apply to such property, not actually used or occupied for the purposes set forth herein, nor to such property held or used as an investment even though the income or rentals received therefrom is used wholly for such literary, educational, scientific, religious, benevolent or charitable purposes. In the event any such property which has been exempted pursuant to the preceding sentence is not used for religious purposes prior to its conveyance which results in its use for nonreligious purposes, there shall be a recoupment of property taxes in an amount equal to the tax which would have been levied upon such property except for such exemption for all taxable years for which such exemption was in effect. Such recoupment tax shall become due and payable in such year as provided by K.S.A. 79-2004, and amendments thereto. A lien for such taxes shall attach to the real property subject to the same on November 1 in the year such taxes become due and all such taxes remaining due and unpaid after the date prescribed for the payment thereof shall be collected in the manner provided by law for the collection of delinquent taxes. Moneys collected from the recoupment tax hereunder shall be credited by the county treasurer to the several taxing subdivisions within which such real property is located in the proportion that the total tangible property tax levies made in the preceding year for each such taxing subdivision bear to the total of all such levies made in that year by all such taxing subdivisions. Such moneys shall be credited to the general fund of the taxing subdivision or if such taxing subdivision is making no property tax levy for the support of a general fund such moneys may be credited to any other tangible property tax fund of general application of such subdivision. This exemption shall not be deemed inapplicable to property which would otherwise be exempt

pursuant to this paragraph because an agency or organization: (a) Is reimbursed for the provision of services accomplishing the purposes enumerated in this paragraph based upon the ability to pay by the recipient of such services; or (b) is reimbursed for the actual expense of using such property for purposes enumerated in this paragraph; or (c) uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purposes of this paragraph; or (d) charges a reasonable fee for admission to cultural or educational activities or permits the use of its property for such activities by a related agency or organization, if any such activity is in furtherance of the purposes of this paragraph; or (e) is applying for an exemption pursuant to this paragraph for a motor vehicle that is being leased for a period of at least one year.

Third. All moneys and credits belonging exclusively to universities, colleges, academies or other public schools of any kind, or to religious, literary, scientific or benevolent and charitable institutions or associations, appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association.

Fourth. The reserve or emergency funds of fraternal benefit societies authorized to do business under the laws of the state of Kansas.

Fifth. All buildings of private nonprofit universities or colleges which are owned and operated by such universities and colleges as student union buildings, presidents' homes and student dormitories.

Sixth. All real and tangible personal property actually and regularly used exclusively by the alumni association associated by its articles of incorporation with any public or nonprofit Kansas college or university approved by the Kansas board of regents to confer academic degrees or with any community college approved by its board of trustees to grant certificates of completion of courses or curriculum, to provide accommodations and services to such college or university or to the alumni, staff or faculty thereof.

Seventh. All parsonages owned by a church society and actually and regularly occupied and used predominantly as a residence by a minister or other clergyman of such church society who is actually and regularly engaged in conducting the services and religious ministrations of such society, and the land upon which such parsonage is located to the extent necessary for the accommodation of such parsonage.

Eighth. All real property, all buildings located on such property and all personal property contained therein, actually and regularly used exclusively by any individually chartered organization of honorably discharged military veterans of the United States armed forces or auxiliary of any such organization, which is exempt from federal income taxation pursuant to section 501(c)(19) of the federal internal revenue code of 1986, for clubhouse, place of meeting or memorial hall purposes, and real property to the extent of not more than two acres, and all buildings located on such property, actually and regularly used exclusively by any such veterans' organization or its auxiliary as a memorial park.

Ninth. All real property and tangible personal property actually and regularly used by a community service organization for the predominant purpose of providing humanitarian services, which is owned and operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign not-for-profit corporation if: (a) The directors of such corporation serve without pay for such services; (b) the corporation is operated in a manner which does not result in the accrual of distributable profits, realization of private gain resulting from the payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered or the realization of any other form of private gain; (c) no officer, director or member of such corporation has any pecuniary interest in the property for which exemption is claimed; (d) the corporation is organized for the purpose of providing humanitarian services; (e) the actual use of property for which an exemption is claimed must be substantially and predominantly related to the purpose of providing humanitarian services, except that, the use of such property for a nonexempt purpose which is minimal in scope and insubstantial in nature shall not result in the loss of exemption if such use is incidental to the purpose of

providing humanitarian services by the corporation; (f) the corporation is exempt from federal income taxation pursuant to section 501(c)(3) of the internal revenue code of 1986; and (g) contributions to the corporation are deductible under the Kansas income tax act. As used in this clause, “humanitarian services” means the conduct of activities which substantially and predominantly meet a demonstrated community need and which improve the physical, mental, social, cultural or spiritual welfare of others or the relief, comfort or assistance of persons in distress or any combination thereof including, but not limited to, health and recreation services, child care, individual and family counseling, employment and training programs for handicapped persons and meals or feeding programs. Notwithstanding any other provision of this clause, motor vehicles shall not be exempt hereunder unless such vehicles are exclusively used for the purposes described therein, except that the use of any such vehicle for the purpose of participating in a coordinated transit district in accordance with the provisions of K.S.A. 75-5032 through 75-5037, and amendments thereto, or K.S.A. 75-5051 through 75-5058, and amendments thereto, shall be deemed as exclusive use.

Tenth. For all taxable years commencing after December 31, 1986, any building, and the land upon which such building is located to the extent necessary for the accommodation of such building, owned by a church or nonprofit religious society or order which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and actually and regularly occupied and used exclusively for residential and religious purposes by a community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

Eleventh. For all taxable years commencing after December 31, 1998, all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies when the applicant for such property, on or before December 31, 2016, has filed an application for exemption pursuant to this subsection or has received a conditional use permit to produce and generate electricity on the property from the county in which the property is located. Any exemption granted under the provisions of this subsection for such property when the applicant, after December 31, 2016, has filed such application or filed such application and received a conditional use permit, shall be in effect for the 10 taxable years immediately following the taxable year in which construction or installation of such property is completed. For purposes of this section, “renewable energy resources or technologies” shall include wind, solar, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

Twelfth. For all taxable years commencing after December 31, 2001, all personal property actually and regularly used predominantly to collect, refine or treat landfill gas or to transport landfill gas from a landfill to a transmission pipeline, and the landfill gas produced therefrom.

The provisions of this section, except as otherwise more specifically provided, shall apply to all taxable years commencing after December 31, 2009.

Sec. 5. K.S.A. 2014 Supp. 79-223 is hereby amended to read as follows: 79-223. (a) It is the purpose of this section to promote, stimulate, foster and encourage new investments in commercial and industrial machinery and equipment in the state of Kansas, to contribute to the economic recovery of the state, to enhance business opportunities in the state, to encourage the location of new businesses and industries in the state as well as the retention and expansion of existing businesses and industries and to promote the economic stability of the state by maintaining and providing employment opportunities, thereby contributing to the general welfare of the citizens of the state, by exempting from property taxation all newly purchased or leased commercial and industrial machinery and equipment, including machinery and equipment transferred into this state for the purpose of expanding an existing business or for the creation of a new business.

(b) The following described property, to the extent specified by this

section, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. Commercial and industrial machinery and equipment acquired by qualified purchase or lease made or entered into after June 30, 2006, as the result of a bona fide transaction not consummated for the purpose of avoiding taxation.

Second. Commercial and industrial machinery and equipment transported into this state after June 30, 2006, for the purpose of expanding an existing business or creation of a new business.

(c) Any purchase, lease or transportation of commercial and industrial machinery and equipment consummated for the purpose of avoiding taxation shall subject the property to the penalty provisions of K.S.A. 79-1422 and 79-1427a, and amendments thereto. The county appraiser shall not reclassify any property that is properly classified for property tax purposes within subclass (5) of class 2 of section 1 of article 11 of the constitution of the state of Kansas.

(d) As used in this section:

(1) “Acquired” shall not include the transfer of property pursuant to an exchange for stock securities, or the transfer of assets from one going concern to another due to a merger, reorganization or other consolidation;

(2) “commercial and industrial machinery and equipment” means property classified for property tax purposes within subclass (5) of class 2 of section 1 of article 11 of the constitution of the state of Kansas, *but shall not include any electric generation facility or addition to an electric generation facility that is used predominately to produce and generate electricity utilizing renewable energy resources or technologies as defined in K.S.A. 79-201, and amendments thereto;*

(3) “qualified lease” means a lease of commercial and industrial machinery and equipment for not less than 30 days for fair and valuable consideration where such machinery and equipment is physically transferred to the lessee to be used in the lessee’s business or trade; and

(4) “qualified purchase” means a purchase of commercial and industrial machinery and equipment for fair and valuable consideration where such machinery and equipment is physically transferred to the purchaser to be used in the purchaser’s business or trade.

(e) The secretary of revenue is hereby authorized to adopt rules and regulations to administer the provisions of this section.

Sec. 6. K.S.A. 2014 Supp. 79-5a01 is hereby amended to read as follows: 79-5a01. (a) As used in this act, the terms “public utility” or “public utilities” means every individual, company, corporation, association of persons, brokers, marketers, lessees or receivers that now or hereafter own, broker or market natural gas inventories stored for resale in an underground formation in this state, or now or hereafter are in control, manage or operate a business of:

(1) A railroad or railroad corporation if such railroad or railroad corporation owns or holds, by deed or other instrument, an interest in right-of-way, track, franchise, roadbed or trackage in this state;

(2) transmitting to, from, through or in this state telegraphic messages;

(3) transmitting to, from, through or in this state telephonic messages;

(4) transporting or distributing to, from, through or in this state natural gas, oil or other commodities in pipes or pipelines, or engaging primarily in the business of storing natural gas in an underground formation;

(5) generating, conducting or distributing to, from, through or in this state electric power;

(6) transmitting to, from, through or in this state water if for profit or subject to regulation of the state corporation commission; and

(7) transporting to, from, through or in this state cargo or passengers by means of any vessel or boat used in navigating any of the navigable watercourses within or bordering upon this state.

(b) The terms “public utility” or “public utilities” shall not include: (1) Rural water districts established under the laws of the state of Kansas; or (2) any individual, company, corporation, association of persons, lessee or receiver owning or operating an oil or natural gas production gathering line which is situated within one county in this state and does not cross any state boundary line; (3) any individual, company, corporation, association of persons, lessee or receiver owning any vessel or boat operated

upon the surface of any manmade waterway located entirely within one county in the state; ~~or~~ (4) for all taxable years commencing after December 31, 1998, any natural gas distribution system which is owned and operated by a nonprofit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use; or (5) any individual, company, corporation, association of persons, lessees or receivers to the extent any activity or facility of such entity generates, markets or sells electricity at wholesale only, has no retail customers and is generated by an electric generation facility or addition to an electric generation facility that is actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies as defined in K.S.A. 79-201, and amendments thereto.

(c) The provisions of subsection (a) as amended by this act shall be applicable to all taxable years commencing after December 31, 2008.

New Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 8. K.S.A. 2014 Supp. 66-1259, 66-1260, 66-1261, 66-1262, 79-201, 79-223 and 79-5a01 are hereby repealed.

Sec. 9. On and after January 1, 2016, K.S.A. 2014 Supp. 66-1256, 66-1257 and 66-1258 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.