AN ACT concerning public utilities; relating to the Kansas energy efficiency investments act; demand-side programs; amending K.S.A. 66-1283 and repealing the existing section.

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

Section 1. K.S.A. 66-1283 is hereby amended to read as follows:

(a) As used in this section:

(1) "Commission" means the state corporation commission;
(2) "demand response" means measures that decrease peak demand or shift demand to off-peak periods of time;
(3) "demand-side program" means any program conducted by: (A) an electric utility to reduce the net consumption of electricity by a retail electric customer; or (B) a natural gas utility to reduce the net consumption of natural gas by a retail gas customer or portfolio of programs conducted by a public utility to modify the consumption of electricity or natural gas on the customer's side of the utility meter. "Demand-side program" may include, but shall not be limited to: (A) energy efficiency measures, not to include any measures to incent fuel switching for residential heating systems; (B) programs, load management; (C) demand response; and (D) interruptible or curtailable load; rates;
(4) "energy efficiency program" means measures that a program or portfolio of programs conducted by a public utility to reduce the amount of energy required to achieve a given end use on the customer's side of the meter while achieving substantially the same level of end-use service; and
(5) "fuel switching" means changing an existing particular end-use from natural gas to electricity or from electricity to natural gas;
(6) "interruptible or curtailable rate" means a tariffed rate under which a customer receives a reduced rate in exchange for agreeing to allow the utility to withdraw the supply of electricity or natural gas under certain specified conditions;
(7) "lost margin revenue" means income from retail sales of electricity or natural gas that is not collected by a utility as a direct result of the success of such utility's demand-side program, less any expenses the utility was not required to pay by forgoing the sale of such electricity or natural gas;
(8) "public utility" means any public electric or gas utility, as
defined in K.S.A. 66-101, and amendments thereto, but does not include a municipally-owned electric or gas utility or an electric or gas cooperative that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d, and amendments thereto; and

(9) "total resource cost test" means a test that compares the sum of avoided utility costs to the sum of all incremental costs of end-use measures that are implemented due to the program, including both utility and participant contributions, plus utility costs to administer, deliver and evaluate each demand-side program.

(b) It is the goal of the state to promote the implementation of cost-effective demand-side programs in Kansas to minimize the long term cost of utility service. It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable, but when evaluated over the long-term planning horizon, but demand-side programs shall not:

(1) Require public utilities to offer, implement or continue demand-side programs;
(2) result in fuel switching; or
(3) restrict fuel choice for new construction residential heating end-uses.

(c) (1) (A) Upon a finding that a submission for any demand-side program was consistent with this section, the commission shall permit public utilities to implement commission-approved such demand-side programs and to recover the associated costs through cost recovery mechanisms submitted pursuant to this section. The commission shall issue an order on any demand-side program plan, associated costs and cost-recovery mechanisms within 180 days after submission to the commission. The commission may extend the approval period to 240 days for good cause. Consistent with K.S.A. 66-117(c), and amendments thereto, if the commission fails to issue a final order on such program plan, associated costs and cost-recovery mechanism within 180 days, or 240 days if the approval period was extended by the commission for good cause, such program plan, associated costs and cost-recovery mechanism shall be deemed approved by the commission and shall take effect on the proposed effective date contained in such plan.

(B) Pursuant to the requirements of this section, the public utility and the commission shall both have the independent authority to accept or reject any proposed establishment, continuation or modification of a demand-side program, portfolio of programs or associated cost-recovery or incentive mechanisms, but no such establishment, continuation or modification of such programs or mechanisms shall take effect without the approval of both the utility and the commission. If the public
utility rejects modifications to a demand-side program or portfolio of programs approved by the commission, including modifications to the cost-recovery mechanism, the public utility shall not be required to implement the program or mechanism.

(C) Upon final ruling of the commission order, The public utility has shall have the right to reconsider and may withdraw its plan during the reconsideration period, which elect not to implement the program and cost-recovery mechanisms approved by the commission order. The reconsideration period shall not exceed 30 calendar days from the date the final order was issued. Pursuant to K.S.A. 77-613, and amendments thereto, the time period for filing a petition for judicial review shall not begin until the completion of any such reconsideration period.

(D) (1) In making its decision deciding whether or not to approve a proposed program, the commission shall determine the appropriate test for evaluating the cost-effectiveness of the demand-side program, the commission shall:
   (A) Consider the entire portfolio of programs and may consider multiple cost-effectiveness tests in evaluating the cost-effectiveness of such demand-side program;
   (B) give primary consideration to the total resource cost test, but shall not reject a demand-side program solely based on the results of a single resource cost test. If a demand-side program passes the total resource cost test with a benefit to cost ratio greater than or equal to a one-to-one ratio, such program shall be found to be just and reasonable and shall be approved; and
   (C) evaluate future investments in demand-side programs without using previous public utility sunk costs.
   (2) Programs targeted to low-income customers or general education campaigns do not need to meet a any cost-effectiveness test, so long as the commission determines that the program or campaign is in the public interest and is supported by a reasonable budget in the context of the overall budget.
   (2)(3) The commission shall allow recovery of the reasonable and prudent costs associated with delivering—commission approved any demand-side programs program implemented pursuant to this section, so long as the program:
   (A) (i) Results in Reduces retail energy consumption; or (ii) reduces the peak demand savings; and (B) is; or (iii) shifts demand to off-peak periods; and
   (B) does not result in fuel switching; and
   (C) is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class.
(4) The fact that a commission-approved program implemented pursuant to this section proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery. Programs determined during subsequent review to not be non-cost-effective, other than programs targeted to low-income customers or general education campaigns, shall be modified to address deficiencies or terminated following such determination.

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

(A) Provide timely cost recovery of investments and expenditures for demand-side programs that may include: (i) Direct contemporaneous recovery as costs are incurred; (ii) mechanisms that project such costs with a later true-up to actual costs; or (iii) capitalization of investments and expenditures for demand-side programs recovered by the utility through amortization;

(B) ensure the recovery of the lost margin revenue, unless the utility's prior general rate case proceeding provided for lost margin revenue recovery of demand-side programs through: (i) Comprehensive utility decoupling mechanisms consistent with best utility practices; or (ii) rate design modifications; and

(C) provide timely earnings opportunities for public utilities associated with cost-effective, measurable and verifiable demand-side program savings that: (i) Allow the public utility to retain a portion of the net benefits of such demand-side programs; (ii) achieve targets through energy savings-based or demand-savings-based incentives; and (iii) provide rate-of-return incentives on investments and expenditures for such programs.

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

(e) To achieve the goals of this act, (3) (A) The commission shall:

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

(2) ensure that the financial incentives for an electric public utility are aligned with helping such utility's customers use energy more efficiently and in a manner that sustains or enhances such customers'
incentives to use energy more efficiently;
(3) provide timely earnings opportunities for public utilities associated with cost effective, measurable and verifiable demand-side program savings;
(4) provide oversight and approval for utility-specific settlements and tariff provisions; and
(5) provide independent evaluation of demand-side programs, as deemed necessary by the commission are conducted.

(B) Such evaluations shall be conducted by a third-party vendor selected by the public utility and approved by the commission. Such evaluations shall include: (i) Peak demand and energy savings and the techniques used to estimate such savings; (ii) the estimated cost-effectiveness of the demand-side programs; (iii) any adjustment to the presumed net to gross ratio of 1.0 that reflects any savings that are attributable to the demand-side programs; and (iv) the net benefits of the demand-side programs.

(f) On or before May 31 of each year, Each public utility shall submit an annual report to the commission describing the results of such demand-side programs for the previous calendar year program year within five months of the program year's end. The report shall include:
(1) Program expenditures, including incentive payments;
(2) estimated peak demand and energy savings impacts and the techniques used to estimate such impacts;
(3) avoided costs and the techniques used to estimate such costs;
(4) the estimated cost-effectiveness of the demand-side programs;
(5) the net economic benefits of the demand-side programs; and
(6) a comparison of the commission authorized program budget to actual costs.

(g) The commission may adopt rules and regulations for the administration of this section.

(h) This section shall govern demand-side programs for public utilities and shall control to the extent it conflicts with any other provision of law or rule or regulation.

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

Sec. 2. K.S.A. 66-1283 is hereby repealed.
Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.