

HOUSE BILL No. 2715

By Committee on Appropriations

2-18

1 AN ACT concerning the department of health and environment; relating to
2 air quality control; Kansas air quality act; fees imposed pursuant to
3 rules and regulations; prohibiting fee increases and the imposition of
4 new fees; amending K.S.A. 65-3001, 65-3005, 65-3006, 65-3007, 65-
5 3008, 65-3022, 65-3024 and 65-3028 and repealing the existing
6 sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. (a) (1) All rules and regulations of the secretary in
10 effect on July 1, 2020, that impose fees pursuant to the Kansas air quality
11 act shall be the only fees imposed by the secretary pursuant to such act,
12 and such fees shall remain unchanged and in full force and effect until a
13 subsequent legislative enactment authorizes such fees to be increased or
14 authorizes the imposition of new fees pursuant to the Kansas air quality
15 act.

16 (2) On and after July 1, 2020, the secretary shall not:

17 (A) Amend or modify any rule and regulation adopted pursuant to the
18 Kansas air quality act if such amendment or modification would increase
19 any fee imposed pursuant to the rules and regulations adopted on or before
20 July 1, 2020; or

21 (B) adopt, create or impose any new fee through rules and regulations
22 adopted pursuant to the Kansas air quality act if such fee was not imposed
23 pursuant to the rules and regulations adopted on or before July 1, 2020.

24 (3) Any fees imposed by the secretary that do not comply with the
25 provisions of this section shall be declared null and void.

26 (b) This section shall be a part of and supplemental to the Kansas air
27 quality act.

28 Sec. 2. K.S.A. 65-3001 is hereby amended to read as follows: 65-
29 3001. K.S.A. 65-3002, 65-3003, 65-3005 through 65-3013 and 65-3015
30 through 65-3020 ~~and K.S.A.~~, 65-3008a, 65-3008b and 65-3024 through
31 65-3028, and amendments thereto, *and section 1, and amendments thereto*,
32 shall be known and may be cited as the Kansas air quality act.

33 Sec. 3. K.S.A. 65-3005 is hereby amended to read as follows: 65-
34 3005. (a) The secretary shall have the power to:

35 (1) *Except as provided in section 1, and amendments thereto*, adopt,
36 amend and repeal rules and regulations implementing and consistent with

1 this act.

2 (2) Hold hearings relating to any aspect of or matter in the
3 administration of this act concerning air quality control, and in connection
4 therewith, compel the attendance of witnesses and the production of
5 evidence.

6 (3) Issue such orders, permits and approvals as may be necessary to
7 effectuate the purposes of this act and enforce the same by all appropriate
8 administrative and judicial proceedings.

9 (4) Require access to records relating to emissions~~which~~ *that* cause
10 or contribute to air pollution.

11 (5) Prepare and develop a comprehensive plan or plans for the
12 prevention, abatement and control of air pollution originating in Kansas
13 that affects air quality in Kansas or in other states or both.

14 (6) Adopt rules and regulations governing such public notification
15 and comment procedures as authorized by this act.

16 (7) Encourage voluntary cooperation by persons or affected groups to
17 achieve the purposes of this act.

18 (8) (A) Encourage local units of government to handle air pollution
19 problems within their respective jurisdictions and on a cooperative basis;
20 (B) provide technical and consultative assistance therefor; and (C) enter
21 into agreements with local units of government to administer all or part of
22 the provisions of the Kansas air quality act in the units' respective
23 jurisdictions.

24 (9) Encourage and conduct studies, investigations and research
25 relating to air contamination and air pollution and their causes, effects,
26 prevention, abatement and control.

27 (10) Encourage air contaminant emission sources to voluntarily
28 implement strategies, including the development and use of innovative
29 technologies, market-based principles and other private initiatives to
30 reduce or prevent pollution.

31 (11) Determine by means of field studies and sampling the degree of
32 air contamination and air pollution in the state and the several parts
33 thereof.

34 (12) Establish ambient air quality standards for the state as a whole or
35 for any part thereof.

36 (13) Collect and disseminate information and conduct educational
37 and training programs relating to air contamination and air pollution.

38 (14) Advise, consult and cooperate with other agencies of the state,
39 local governments, industries, other states, interstate or interlocal agencies,
40 and the federal government, and with interested persons or groups.

41 (15) Accept, receive and administer grants or other funds or gifts
42 from public and private entities, including the federal government, for the
43 purpose of carrying out any of the functions of this act. Such funds

1 received by the secretary pursuant to this section shall be deposited in the
2 state treasury to the account of the department of health and environment.

3 (16) Enter into contracts and agreements with other state agencies or
4 subdivisions, local governments, other states, interstate agencies, the
5 federal government or its agencies or private entities as is necessary to
6 accomplish the purposes of the Kansas air quality act.

7 (17) Conduct or participate in intrastate or interstate emissions
8 trading programs or other programs that demonstrate equivalent air quality
9 benefits for the prevention, abatement and control of air pollution in
10 Kansas or in other states or both.

11 (18) Prepare and adopt a regional haze plan as may be necessary to
12 prevent, abate and control air pollution originating in Kansas that affects
13 air quality in Kansas or in other states or both. Any regional haze plan
14 prepared by the secretary shall be no more stringent than is required by 42
15 U.S.C. § 7491.

16 (19) Participate in the activities of any visibility transport commission
17 established under 42 U.S.C. § 7492. The secretary shall report to the
18 governor and the legislature on the activities of any such visibility
19 transport commission annually.

20 (b) It is a policy of the state to regulate the air quality of the state and
21 implement laws and regulations that are applied equally and uniformly
22 throughout the state and consistent with those of the federal government.

23 (1) *Except as provided in section 1, and amendments thereto*, the
24 secretary shall have the authority to promulgate rules and regulations to
25 establish standards to ensure that the state is in compliance with the
26 provisions of the federal clean air act, as amended, ~~(42 U.S.C. section §~~
27 ~~7401 et seq.)~~. The standards so established shall not be any more stringent,
28 restrictive or expansive than those required under the federal clean air act,
29 as amended, nor shall the rules and regulations be enforced in any area of
30 the state prior to the time required by the federal clean air act. If the
31 secretary determines that more stringent, restrictive or expansive rules and
32 regulations are necessary, the secretary may implement the rules and
33 regulations only after approval by an act of the legislature. The restrictions
34 of this subsection shall not apply to the parts of the state implementation
35 plan developed by the secretary to bring a nonattainment area into
36 compliance when needed to have a United States environmental protection
37 agency approved state implementation plan.

38 (2) For any application for a permit required by federal or state law,
39 the secretary shall not deny or delay the issuance of such permit when the
40 requirements of this act have been met.

41 Sec. 4. K.S.A. 65-3006 is hereby amended to read as follows: 65-
42 3006. The secretary shall:

43 (a) *Except as provided in section 1, and amendments thereto*, publish

1 and enforce the rules, regulations and standards promulgated hereunder.
2 The secretary shall furnish a copy of such rules, regulations or standards
3 adopted hereunder to any citizen upon request.

4 (b) Employ such professional, technical and other staff, and provide
5 such technical, scientific and other services as may be required, including
6 laboratory facilities, for the purpose of effectuating the provisions of this
7 act from funds appropriated and available for the purposes of this act.

8 Sec. 5. K.S.A. 65-3007 is hereby amended to read as follows: 65-
9 3007. (a) *Except as provided in section 1, and amendments thereto*, the
10 secretary, by rule and regulation, shall classify air contaminant sources
11 which, in the secretary's judgment, may cause or contribute to air
12 pollution, according to levels and types of emissions and other
13 characteristics which relate to air pollution and may require reporting for
14 any such class or classes. The classifications promulgated by the secretary
15 shall be made to apply to the state as a whole or to any designated area of
16 the state, and shall be made with special reference to effects on health,
17 economic and social factors, and physical effects on property.

18 (b) The secretary shall require air contaminant emission sources to
19 monitor emissions, operating parameters, ambient impact of any source
20 emissions or any other parameters deemed necessary by the secretary. The
21 secretary may require air contaminant emission sources to keep records
22 and make reports consistent with the purposes of this act.

23 (c) Any person operating or responsible for the operation of air
24 contaminant sources of any class for which the rules and regulations of the
25 secretary require reporting shall make reports containing information as
26 may be required by the secretary concerning location, size and height of
27 contaminant outlets, processes employed, fuels used and the nature and
28 time periods or duration of emissions, and such other information as is
29 relevant to air pollution and available or reasonably capable of being
30 assembled.

31 Sec. 6. K.S.A. 65-3008 is hereby amended to read as follows: 65-
32 3008. (a) No person shall construct, own, operate, install, alter or use any
33 air contaminant emission stationary source which, in accordance with rules
34 and regulations, the secretary finds may cause or contribute to air
35 pollution, unless an appropriate approval or permit has been issued for the
36 source by the secretary under this act. Approvals or permits issued by the
37 secretary may be subject to conditions consistent with the purposes of this
38 act and rules and regulations promulgated under this act.

39 (b) The secretary shall require that applications for approvals and
40 permits, and renewals thereof, under this act shall be accompanied by
41 application fees and such plans, specifications, compliance plans or other
42 information as the secretary deems necessary. Applications shall be
43 submitted on forms provided by the secretary and shall be signed by a

1 responsible official of the source, who shall certify the accuracy of the
2 information submitted.

3 (c) The issuance or holding of an approval or permit shall not convey
4 any property right or exclusive privilege to the holder thereof.

5 (d) Without any further action on the part of the secretary, an
6 approval or a permit shall become void and without effect on its expiration
7 date unless a completed application form and any required fee are filed
8 with the secretary on or before the expiration date of the approval or the
9 permit. For purposes of this subsection, the secretary may specify by rule
10 and regulation an amount of time prior to the expiration date of an
11 operating permit by which a complete application form and any required
12 fee must be filed with the secretary in order to be considered timely filed.
13 The secretary may provide for a grace period by rule and regulation.

14 (e) The secretary may issue by rule and regulation a general approval
15 or permit covering numerous similar sources. Any general approval or
16 permit shall comply with all requirements applicable to approvals or
17 permits under this act. Any source covered by a general approval or permit
18 must apply to the secretary and receive authority to operate under the
19 general approval or permit.

20 (f) The secretary may fix, charge and collect fees for approvals and
21 permits, and the renewal thereof, to cover all or any part of the cost of
22 administering the provisions of {the} Kansas air quality act, other than
23 K.S.A. 65-3027, and amendments thereto. The secretary shall adopt rules
24 and regulations fixing such fees. The fees shall be deposited in the state
25 treasury and credited to the air quality fee fund established in K.S.A. 65-
26 3024, and amendments thereto, except that if all or any portion of the
27 regulatory services for which a fee is collected under this section is
28 performed by a county, city-county or multicounty health department, that
29 portion of such fee which pertains to such services, as determined by the
30 secretary, shall be credited to the local air quality control authority
31 regulation services fund, which is hereby created in the state treasury, and
32 shall be paid from such fund to such local air quality control authority.

33 (g) *Any fees imposed by the secretary pursuant to this section shall*
34 *comply with section 1, and amendments thereto.*

35 Sec. 7. K.S.A. 65-3022 is hereby amended to read as follows: 65-
36 3022. (a) In order to defray costs in determining and monitoring the
37 environmental impact of power generation facilities with respect to air
38 quality and, in the case of nuclear powered generation facilities, the overall
39 radiological impact thereof, the secretary is authorized and directed to
40 adopt rules and regulations to provide for the establishment of fees and for
41 the collection thereof from each such facility. Such fees shall be
42 determined and collected annually, and such determination shall be based
43 upon the size and type of such facilities. In establishing programs for

1 determining and monitoring environmental impact, the secretary shall take
2 into consideration monitoring programs conducted by other persons and
3 where possible avoid duplication of effort and expense. The secretary may
4 also provide for quality review and evaluation of monitoring conducted by
5 other persons in order to further the objectives of this act and to determine
6 the extent and necessity of monitoring programs to be conducted by the
7 department of health and environment.

8 *(b) (1) All rules and regulations of the secretary of health and*
9 *environment in effect on July 1, 2020, that impose fees pursuant to this*
10 *section shall be the only fees imposed by the secretary pursuant to this*
11 *section and such fees shall remain unchanged and in full force and effect*
12 *until a subsequent legislative enactment authorizes such fees to be*
13 *increased or authorizes the imposition of new fees pursuant to this section.*

14 *(2) On and after July 1, 2020, the secretary shall not:*

15 *(A) Amend or modify any rule and regulation adopted pursuant to*
16 *this section if such amendment or modification would increase any fee*
17 *imposed pursuant to the rules and regulations adopted on or before July 1,*
18 *2020; and*

19 *(B) adopt, create or impose any new fee through rules and*
20 *regulations adopted pursuant to this section if such fee was not imposed*
21 *pursuant to the rules and regulations adopted on or before July 1, 2020.*

22 *(3) Any fees imposed by the secretary that do not comply with this*
23 *subsection shall be declared null and void.*

24 Sec. 8. K.S.A. 65-3024 is hereby amended to read as follows: 65-
25 3024. (a) *Except as provided in section 1, and amendments thereto,* the
26 secretary may fix, charge and collect annual emissions fees in amounts
27 necessary to pay the direct and indirect costs of administering the
28 provisions of the Kansas air quality act. The secretary shall adopt rules and
29 regulations fixing such fees and shall periodically increase or decrease
30 such fees consistent with the need to cover the direct and indirect costs of
31 administering the program. To the extent possible, annual emission fees
32 shall be based upon actual emissions determined pursuant to rules and
33 regulations adopted by the secretary. For purposes of determining emission
34 fees for a facility, emissions of any single regulated pollutant in excess of
35 4,000 tons per year shall not be included in the calculation when
36 determining the total emissions from the facility.

37 (b) There is hereby established in the state treasury the air quality fee
38 fund. Revenue from the following sources shall be deposited in the state
39 treasury and credited to the fund:

40 (1) Fees collected under subsection (a);

41 (2) any moneys recovered by the state under the provisions of this
42 act, including permit and approval fees collected under K.S.A. 65-3008,
43 and amendments thereto, administrative expenses, civil penalties and

1 moneys paid under any agreement, stipulation or settlement; and

2 (3) interest attributable to investment of moneys in the fund.

3 (c) Moneys deposited in the fund shall be expended only for the
4 purpose of administering the Kansas air quality act, including funding of a
5 technical and environmental compliance assistance program, and for no
6 other governmental purposes.

7 (d) On or before the 10th of each month, the director of accounts and
8 reports shall transfer from the state general fund to the air quality fee fund
9 interest earnings based on:

10 (1) The average daily balance of moneys in the air quality fee fund
11 for the preceding month; and

12 (2) the net earnings rate of the pooled money investment portfolio for
13 the preceding month.

14 (e) All expenditures from the fund shall be made in accordance with
15 appropriation acts upon warrants of the director of accounts and reports
16 issued pursuant to vouchers approved by the secretary for the purposes set
17 forth in this section.

18 Sec. 9. K.S.A. 65-3028 is hereby amended to read as follows: 65-
19 3028. *Except as provided in section 1, and amendments thereto*, all rules
20 and regulations promulgated pursuant to K.S.A. 65-3001 et seq., and
21 amendments thereto, in existence on the effective date of this act shall
22 continue to be effective until revised, amended, repealed or nullified
23 pursuant to law.

24 Sec. 10. K.S.A. 65-3001, 65-3005, 65-3006, 65-3007, 65-3008, 65-
25 3022, 65-3024 and 65-3028 are hereby repealed.

26 Sec. 11. This act shall take effect and be in force from and after its
27 publication in the statute book.