Session of 2025

SENATE BILL No. 233

By Committee on Federal and State Affairs

2-6

AN ACT concerning energy; relating to commercial wind and solar energy facilities; establishing requirements for the decommissioning of such facilities; requiring a county to enter into a decommissioning agreement with a facility owner prior to construction of any such facility; requiring the facility owner to provide financial assurance in an amount sufficient to cover the costs of decommissioning; requiring decommissioning costs to be paid by affected landowners under certain circumstances.

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

Section 1. (a) (1) Prior to the construction of any commercial solar energy facility or commercial wind energy facility in this state, the board of county commissioners of the county where such proposed facility will be located shall require the facility owner to enter into a decommissioning agreement with the county. The decommissioning agreement shall establish a sufficient, efficient and enforceable decommissioning plan for the facility. The decommissioning plan shall require a facility owner to decommission all generating units and applicable supporting facilities and materially return and restore any land disturbed or changed as a result of the construction, operation and decommissioning of the facility to the condition that such land existed prior to such construction, operation and decommissioning.

(2) The decommissioning plan shall be prepared by an independent, third-party engineer licensed under the laws of this state. Such plan shall include an estimate and description of the amount of financial assurance that shall be sufficient for the facility owner to implement the decommissioning plan. Such financial assurance cost estimate shall be updated by such an engineer at least once every five years to account for any inflation adjustments or other factors. The facility owner shall reimburse the county for any costs borne by the county to contract with an engineer pursuant to this section.

(3) The facility owner shall provide the financial assurance determined pursuant to paragraph (2) in the form of an irrevocable standby letter of credit, performance bond, surety bond or unconditional payment guarantee executed by a parent company of the facility owner only if such parent company maintains an investment grade credit rating. The county

shall have the sole authority to determine the form of financial assurance required pursuant to a decommissioning plan and may, from time to time and as conditions may require, revise the form of financial assurance required. Such financial assurance shall at all times be accessible by such county so that the county may initiate decommissioning of the facility in accordance with the terms and conditions of the decommissioning agreement.

(b) Upon any change of ownership of a commercial solar energy facility or commercial wind energy facility, a decommissioning agreement entered into pursuant to this section shall be transferred to and all such rights and obligations assumed by the subsequent facility owner.

(c) If a facility owner indicates an inability to complete decommissioning, or is no longer in business, and the county is unable to access the financial assurance to complete decommissioning in accordance with a decommissioning plan entered into pursuant to this section, the county shall decommission such facility in accordance with the decommissioning plan and shall assess against any landowner who is subject to a lease or easement relating to such facility the costs borne by the county to decommission any such facility on such landowner's land. Prior to the county bearing the costs to decommissioning any such facility and assessing such costs against landowners as provided in this subsection, the county may authorize any landowner to decommission any such facility and may establish reasonable time limitations for the landowner's completion of such decommissioning.

(d) Any decommissioning agreement entered into pursuant to this section shall include meaningful remedy and penalty provisions for a facility owner's noncompliance with such agreement, including a requirement that when the county commences a civil action against a facility owner with respect to the enforcement or interpretation of a decommissioning agreement, the county shall be entitled to an award of the county's costs of such litigation, including reasonable attorney fees, from the facility owner. The county shall have authority to enforce a decommissioning agreement by mandamus or other appropriate proceeding at law or equity.

(e) As used in this section:

(1) "Commercial solar energy facility" means any device or assembly of devices and supporting facilities that has a nameplate capacity of a least one megawatt and uses solar energy to generate electricity for the primary purpose of wholesale or retail sale.

(2) "Commercial wind energy facility" means any device or assembly of devices and supporting facilities that has a nameplate capacity of at least one megawatt and uses kinetic energy from the wind to generate electricity for the primary purpose of wholesale or retail sale.

(3) "Facility owner" means any person who has a direct ownership interest in or who is acting as the developer or operator of a commercial solar energy facility or commercial wind energy facility.

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