

HOUSE BILL No. 2662

By Committee on Energy and Utilities

2-5

9 AN ACT concerning energy; establishing the wind generation permit act.

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

12 Section 1. Sections 1 through 7, and amendments thereto, shall be
13 known and may be cited as the wind generation permit act.

14 Sec. 2. As used in the wind generation permit act:

15 (a) "Applicant" means a person or entity filing an application under
16 this act.

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

18 (c) "Commercial wind energy conversion system" means a wind-
19 driven machine that converts wind energy into electrical power for the
20 primary purpose of sale, resale or off-site use.

21 (d) "Facility" means an electric generation facility, whose main pur-
22 pose is to supply electricity, consisting of one or more wind turbines and
23 other accessory structures and buildings including substations, meteorolo-
24 gical towers, electrical infrastructure, transmission lines and other ap-
25 purtenant structures and facilities. "Facility" does not mean a stand-alone
26 wind turbine constructed primarily for residential or farm use.

27 (e) "Owner" means any entity or entities having an equity ownership,
28 at any time, in a facility under this act, including their respective succes-
29 sors and assigns.

30 (f) "Turbine" means a wind energy conversion system that converts
31 wind energy into electricity through the use of a wind turbine generator,
32 and includes the nacelle, rotor, tower and pad transformer, if any.

33 Sec. 3. No wind facility or individual turbine capable of generating
34 more than 0.5 megawatts of electricity shall be constructed or operated
35 within this state without having the county commissioners in every county
36 in which the facility or turbine will be located grant a permit for the
37 construction and operation of the facility or turbine. A permit may be
38 approved if an applicant complies with the following:

39 (a) Provide notice in writing to all landowners of record within 1 mile
40 and to any municipality, as defined in K.S.A. 75-1117, and amendments
41 thereto, within 20 miles of the proposed facility or turbine. Notice of the
42 facility or turbine shall be published in the official newspaper of the city
43 or county where the proposed facility or turbine would be located. The

1 notice shall include a description of the location of the proposed facility
2 or turbine and the size of the proposed facility or turbine.

3 (b) Provide an emergency management plan to the county commis-
4 sioners prior to the beginning of construction. Prior to submitting the
5 plan to the county commissioners the plan will be submitted for review
6 to the affected fire chiefs, county emergency management coordinator
7 and the county sheriffs in the affected counties. The emergency manage-
8 ment plan shall be reviewed following construction and prior to com-
9 mencing operation.

10 (c) Provide documentation satisfactory to the board of county com-
11 missioners that access has been provided to the proposed site. All private
12 roads located within the land area for the proposed facility or turbine
13 shall be clearly marked as private roadways. The county is under no ob-
14 ligation to repair, maintain or accept any dedication of such roads to the
15 public use. A traffic study of the county roadways leading to the proposed
16 site and surrounding ancillary roads shall be submitted to the county and
17 a developer must enter into a road use agreement with the county prior
18 to commencement of construction.

19 (d) Provide a preliminary site plan indicating proposed roadways, pro-
20 posed turbine locations, proposed substation locations, transmission, col-
21 lector and gathering lines and other ancillary facility components. Follow-
22 ing construction and prior to commencing operations, the site plan must
23 be supplemented to show the final location of facilities.

24 (e) The applicant has complied with the following minimum safety
25 setback requirements:

26 (1) Setbacks of all turbines from the nearest property line, and from
27 the nearest public road right-of-way, to a distance not less than one and
28 one-half times the height of the turbine, including the blades;

29 (2) setbacks of all turbines from any residential or occupied structure
30 to a distance of not less than $\frac{1}{4}$ mile, with the signed written consent of
31 the landowner of the structure and to a distance not less than $\frac{1}{2}$ mile
32 without the signed permission of the landowner of the structure; and

33 (3) setbacks of all turbines from the legal limits of any town, munic-
34 ipality, as defined in K.S.A. 75-1117, and amendments thereto, or platted
35 subdivision to a distance not less than $\frac{1}{2}$ mile.

36 (f) The applicant has submitted a qualified professional analysis of
37 the facility or turbine, identifying all potential adverse impacts on natural
38 resources including, but not limited to, the facility or turbine's affect on
39 wetlands, native grasslands and other fragile or rare ecosystems, historical
40 and cultural sites and antiquities, wildlife habitats, avian migration cor-
41 ridors, water resources and soil quality. The application shall describe in
42 detail all measures proposed to avoid or mitigate any potential adverse
43 impacts on natural resources and the expected net effects of these meas-

1 ures. The board of county commissioners may refer an application for
2 analysis and comment to the Kansas department of agriculture, the Kan-
3 sas department of wildlife and parks, the state historical society, the Kan-
4 sas department of health and environment and any other appropriate state
5 agencies.

6 (g) Provide satisfactory proof of financial assurance, satisfactory plans
7 for decommissioning and reclamation of the proposed facility or turbine,
8 and having satisfied the requirements of the Kansas decommissioning
9 trust fund pursuant to section 6, and amendments thereto.

10 Sec. 4. No later than 45 days after receiving an application for a per-
11 mit pursuant to section 3, and amendments thereto, the county commis-
12 sioners shall hold a public hearing on construction of the proposed facility
13 or turbine.

14 Sec. 5. (a) The applicant shall submit a decommissioning plan to the
15 county. The plan shall include the anticipated life of the facility or turbine,
16 the estimated decommissioning costs net of salvage value in current dol-
17 lars and the anticipated manner in which the facility or turbine will be
18 decommissioned and the site restored.

19 (b) (1) The facility or turbine owner shall, at the facility or turbine
20 owner's expense, complete decommissioning of the facility or individual
21 turbines within 12 months after the end of the useful life of the facility
22 or the useful life of the individual turbines. Decommissioning shall in-
23 clude the requirement that all equipment be removed to a depth of two
24 feet below the surrounding ground surface, access roads removed to the
25 landowner's satisfaction and the ground restored to the condition speci-
26 fied in the reclamation plan. Access roads may be maintained if so re-
27 quested by the landowner and may not be included within the reclamation
28 requirements.

29 (2) The commissioners of the county where the facility or turbine is
30 located shall make the final determination as to the satisfactory comple-
31 tion of decommissioning. A public hearing shall be held no less than one
32 week prior to a vote for approval of the decommissioning of the facility.

33 (c) (1) An individual wind turbine shall be considered to have been
34 abandoned when the turbine is incapable of producing more than 20%
35 of the average amount of electricity produced by such turbine in com-
36 parable time periods, adjusted for actual wind conditions, as determined
37 by the county, for a period of at least six consecutive months and there
38 is no demonstrated viable plan to restore the equipment to operating
39 condition. An extension of the six-month time period may be granted by
40 the county upon presentation of sufficient justification by the turbine
41 owner.

42 (2) An entire facility shall be considered to have been abandoned
43 when at least 50% of the individual wind turbines have not produced

1 electricity for a period of at least six consecutive months and there is no
2 demonstrated viable plan to restore the equipment to operating condi-
3 tion. An extension of the six-month time period may be granted by the
4 county upon presentation of sufficient justification by the facility owner.

5 (d) If the facility or turbine owner does not complete decommission-
6 ing within the periods prescribed in this section, the county may take
7 necessary measures to complete decommissioning. The entry into and
8 submission of evidence of a participating landowner agreement to the
9 county shall constitute agreement and consent of the parties to the agree-
10 ment, the parties' respective heirs, successors and assigns that the county
11 may take such action as necessary to implement the decommissioning
12 plan.

13 Sec. 6. (a) The Kansas decommissioning trust fund is hereby created
14 in the state treasury and shall be administered by the commission for the
15 decommissioning of facilities and turbines in the state. The commission
16 shall remit all moneys received by or for it from fees, charges or penalties
17 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
18 and amendments thereto. Upon receipt of each such remittance, the state
19 treasurer shall deposit the entire amount in the state treasury. All ex-
20 penditures from the Kansas decommissioning trust fund shall be made
21 in accordance with appropriation acts upon warrants of the director of
22 accounts and reports issued pursuant to vouchers approved by the chair-
23 person of the state corporation commission, or by a person or persons
24 designated by the chairperson.

25 (b) The commission shall require the payment of a fee from all fa-
26 cilities located in the state, to fund the Kansas decommissioning trust
27 fund. The fee may be based upon total generation nameplate capacity.

28 (c) The Kansas decommissioning trust fund shall be used exclusively
29 for the purpose of assisting the facility owner in the completion of the
30 decommissioning and reclamation of abandoned facilities. Upon failure
31 to complete decommissioning and the abandonment by the facility owner,
32 a county may petition to the commission for funding to complete the
33 decommissioning and reclamation of a facility or a turbine, up to the
34 amount, plus earnings, contributed to the fund by every owner of the
35 abandoned facility.

36 (d) The Kansas decommissioning trust fund shall not be used for
37 purposes not enumerated in this section.

38 Sec. 7. (a) Nothing in this act shall be construed to preclude a county
39 or a municipality, as defined in K.S.A. 75-1117, and amendments thereto,
40 from adopting more stringent permitting standards than those established
41 by this act.

42 (b) Nothing in this act shall be construed to preclude a county from
43 charging reasonable permitting fees.

1 (c) The provisions of this act shall apply to the initial applicant and
2 to each successive owner, leasor and holder of an equity interest in a
3 facility.

4 (d) The provisions of this act shall not apply to facilities or turbines
5 constructed prior to the effective date of this act.

6 Sec. 8. This act shall take effect and be in force from and after its
7 publication in the statute book.