

HOUSE BILL No. 2636

By Committee on Energy, Utilities and Telecommunications

Requested by Allie Devine on behalf of Kansas Farm Bureau and Kansas Livestock Association

2-2

1 AN ACT concerning energy; relating to certain electric generation and
2 energy storage facilities; establishing requirements for the
3 development, construction, modification, operation, maintenance and
4 decommissioning of industrial wind and solar energy conversion
5 systems and industrial battery energy storage systems; authorizing the
6 board of county commissioners of a county to permit or deny the
7 construction of such industrial energy facilities; establishing a protest
8 petition and election process to contest such county action; providing
9 jurisdiction to the state corporation commission to control and permit
10 the development, construction, modification, operation, maintenance
11 and decommissioning of such facilities; requiring the commission to adopt
12 a permit prior to the new construction or expansion
13 of any such facility; requiring owners of existing industrial energy
14 facilities to register with the commission; establishing minimum
15 setback distances for such facilities; requiring the commission to adopt
16 a code of conduct and agricultural mitigation protocols; requiring a
17 facility owner to establish and maintain a decommission plan and
18 provide adequate financial assurance for the decommissioning;
19 authorizing the commission to issue certain orders and impose civil
20 penalties for violations; authorizing the commission to adopt rules and
21 regulations.

22
23 *Be it enacted by the Legislature of the State of Kansas:*

24 Section 1. The legislature hereby finds and declares that:

25 (a) The development of industrial energy facilities in Kansas
26 significantly affects the welfare of the population, the environmental
27 quality, the aesthetic quality, the location and growth of agricultural,
28 industrial and commercial activities and the use of the state's natural
29 resources;

30 (b) the development of industrial energy facilities within the state
31 should be regulated to promote the reasonable, orderly and effective
32 development of such facilities; and

33 (c) the development, construction, modification, maintenance,
34 operation and decommissioning of industrial energy facilities are matters

1 of both statewide and local concern and interest.

2 Sec. 2. As used in sections 1 through 13, and amendments thereto:

3 (a) "Cessation of operations" means an industrial energy facility or
4 generating or storage unit thereof has not produced or discharged electrical
5 energy for a period of 12 months, except that such 12-month period shall
6 not include any period in which the: (1) Project fails to produce or
7 discharge electrical energy due to an event of force majeure; or (2) owner
8 of the industrial energy facility has retained legal control of the project's
9 footprint and has commenced rebuilding the facility.

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

11 (c) "Expansion" means any:

12 (1) New addition to an existing industrial energy facility that
13 increases the site area or physical footprint of such facility or, in the case
14 of an industrial wind energy conversion system:

15 (A) Construction of a new wind turbine; or

16 (B) activity that increases to the total tower height of a wind turbine
17 as measured from ground level to the blade tip; or

18 (2) repowering of an existing industrial energy facility.

19 (d) "Full and complete decommissioning" means, commencing upon
20 the cessation of operations of an industrial energy facility:

21 (1) The removal and proper disposal of all generating units or energy
22 storage units and all appurtenant facilities and equipment of the industrial
23 energy facility, including, but not limited to, the foundations, support
24 structures, electric lines, electric and electronic devices, energy storage
25 facilities and fencing; and

26 (2) the return and restoration of any land disturbed or changed as a
27 result of the construction and operation of the industrial energy facility to
28 the useful condition that existed prior to the construction and operation of
29 the facility.

30 (e) "Industrial battery energy storage system" means an
31 electrochemical or thermal device or system of devices that are capable of
32 absorbing and storing electrical or thermal energy and discharging such
33 energy at a later time to provide for the discharge or production of one
34 megawatt-hour or more of electrical energy. "Industrial battery energy
35 storage system" includes any appurtenant facilities and equipment of an
36 industrial battery energy storage system.

37 (f) "Industrial energy facility" means any:

38 (1) Industrial battery energy storage system;

39 (2) industrial solar energy conversion system; or

40 (3) industrial wind energy conversion system.

41 (g) "Industrial energy facility owner" means any person or entity that:

42 (1) Has a direct ownership interest in an industrial energy facility
43 regardless of whether the person or entity is involved in acquiring the

1 necessary rights, permits and approvals or planning for the construction
2 and operation of the facility; or

3 (2) is acting as the developer or operator of an industrial energy
4 facility by acquiring the necessary rights, permits and approvals or
5 planning for the construction and operation of the facility, regardless of
6 whether the person or entity will directly own or operate the facility.

7 (h) "Industrial solar energy conversion system" means any device or
8 assembly of devices and supporting facilities that are used to convert
9 sunlight into electrical energy for the primary purpose of storage and
10 wholesale sales of generated electricity and has a total system-rated or
11 nameplate generating capacity of one megawatt or more. "Industrial solar
12 energy conversion system" includes any appurtenant facilities and
13 equipment of an industrial solar energy conversion system.

14 (i) "Industrial wind energy conversion system" means any device or
15 assembly of devices and supporting facilities that utilize wind energy to
16 generate electricity for the primary purpose of storage and wholesale sales
17 of generated electricity and has a total system-rated or nameplate
18 generating capacity of one megawatt or more. "Industrial wind energy
19 conversion system" includes any appurtenant facilities and equipment of
20 an industrial wind energy conversion system.

21 (j) "Nonparticipating property" means any parcel of real property that
22 is adjacent to a parcel of real property for which a landowner has entered
23 into a lease or easement agreement to authorize the construction and
24 operation of an industrial energy facility on such property, and the
25 landowner of such nonparticipating property has not entered into any such
26 lease or easement agreement relating to such facility.

27 (k) "Partial decommissioning" means, commencing upon the
28 cessation of operations of an individual generating unit or energy storage
29 unit of an industrial energy facility:

30 (1) The removal and proper disposal of all generating units or energy
31 storage units and all appurtenant facilities and equipment of the industrial
32 energy facility, including, but not limited to, the foundations, support
33 structures, electric lines, electric and electronic devices, energy storage
34 facilities and fencing; and

35 (2) the return and restoration of any land disturbed or changed as a
36 result of the construction and operation of the industrial energy facility to
37 the useful condition that existed prior to the construction and operation of
38 the facility.

39 (l) "Repowering" means any construction activities to completely or
40 partially dismantle, upgrade and replace equipment at an industrial energy
41 facility that results in an increase to the facility's energy generation output
42 or energy storage potential. "Repowering" does not include routine
43 maintenance or replacement of malfunctioning equipment or components.

1 Sec. 3. (a) On and after July 1, 2026, the board of county
2 commissioners, by resolution, may permit or deny the construction of an
3 industrial energy facility within the county. Such resolution shall be
4 published once each week for two consecutive weeks in a newspaper of
5 general circulation in the county. The resolution shall take effect 60 days
6 after final publication unless a valid protest petition, signed by not less
7 than 5% of the qualified electors of the county, is filed with the county
8 election officer within 60 days of the final publication of the resolution.

9 (b) Notwithstanding the provisions of subsection (a), the qualified
10 electors of a county may file a petition to the board of county
11 commissioners of a county requesting an election to permit or deny the
12 construction of an industrial energy facility within the county. Such
13 petition shall be signed by not less than 5% of the qualified electors of the
14 county.

15 (c) The following statement shall appear on a petition filed pursuant
16 to subsection (a) or (b):

17 "We request an election to determine whether an industrial energy
18 facility owner shall be allowed, either directly or indirectly, to own,
19 acquire or otherwise obtain or lease any agricultural or other land for the
20 purpose of constructing an industrial energy facility in _____ county."

21 (d) If a valid petition is filed pursuant to subsection (a) or (b), the
22 county election officer shall submit the following question to the qualified
23 electors of the county at the next state, county or special election:

24 "Shall an industrial energy facility owner be allowed, either directly or
25 indirectly, to own, acquire or otherwise obtain or lease any agricultural or
26 other land for the purpose of constructing an industrial energy facility in
27 _____ county?"

28 (e) If a majority of the votes cast and counted are in opposition to
29 allowing an industrial energy facility to be constructed in such county, an
30 industrial energy facility shall not be constructed in such county. The
31 county election officer shall transmit a copy of the result of such election
32 to the secretary of state, who shall publish such result in the Kansas
33 register with a statement that an industrial energy facility shall not be
34 constructed in such county.

35 (f) If a majority of the votes cast and counted are in favor of allowing
36 an industrial energy facility to be constructed in such county, an industrial
37 energy facility may be constructed in such county subject to all federal and
38 state laws and rules and regulations, local ordinances or resolutions,
39 enforceable land use restrictions and the terms or conditions of any
40 agreement that pertains to an industrial energy facility. The county election
41 officer shall transmit a copy of the result of such election to the secretary
42 of state, who shall publish such result in the Kansas register with a
43 statement that an industrial energy facility may be constructed in such

1 county.

2 (g) The election provided for by this section shall be conducted, and
3 the votes counted and canvassed, in the manner provided by law for
4 question submitted elections of the county.

5 (h) No election conducted pursuant to this section shall be applied or
6 construed to prohibit the development, construction, modification,
7 operation, maintenance or decommissioning of any industrial energy
8 facility that was:

9 (1) Constructed on or before July 1, 2026; or

10 (2) authorized to be constructed by the board of county
11 commissioners prior to July 1, 2026, through:

12 (A) The issuance of a building, zoning or development permit that
13 authorizes the construction of the facility pursuant to zoning regulations;

14 (B) the issuance of a conditional or special use permit that authorizes
15 the construction of the facility notwithstanding zoning regulations; or

16 (C) the execution of a contractual agreement between the county and
17 the industrial energy facility owner that establishes terms, conditions,
18 rights and remedies relating to the development and construction of such
19 industrial energy facility within the county.

20 Sec. 4. (a) Except as otherwise provided in this section, the state
21 corporation commission is given full power, authority and jurisdiction to
22 supervise and control the development, construction, modification,
23 operation, maintenance and decommissioning of industrial energy facilities
24 in this state. The commission shall have continuing jurisdiction over the
25 development, construction, operation, maintenance and decommissioning
26 of any industrial energy facility permitted by the commission pursuant to
27 section 5, and amendments thereto.

28 (b) Nothing in this act shall preempt or prohibit:

29 (1) Any county or city from adopting or implementing planning and
30 land use laws, ordinances, resolutions and regulations pursuant to K.S.A.
31 12-741 et seq., and amendments thereto, that are more restrictive than the
32 provisions of this act, or any rules and regulations adopted thereunder, for
33 the protection of public health, safety and welfare;

34 (2) any county or city from requiring an industrial energy facility
35 owner to enter into a separate agreement with such county or city that
36 imposes terms and conditions that are more restrictive than the provisions
37 of this act, or any rules and regulations adopted thereunder, for the
38 protection of public health, safety and welfare; or

39 (3) the enforceability and operation of any terms and conditions of
40 any written lease or easement agreement between a landowner and an
41 industrial energy facility owner that are more restrictive than the
42 provisions of this act, or any rules and regulations adopted thereunder.

43 Sec. 5. (a) On and after July 1, 2026, no person or entity shall,

1 without first obtaining a permit from the commission in accordance with
2 this section, begin site preparation for or construction of a new industrial
3 energy facility or proceed with an expansion to an existing industrial
4 energy facility. Whenever any person or entity seeks to obtain such a
5 permit, the person or entity shall file an application with the commission
6 that provides:

7 (1) The name, address and contact information of the applicant;
8 (2) a description of the nature, purpose and location of the facility or
9 expansion thereof;

10 (3) a statement of the reasons for the selection of the proposed
11 location of the facility or expansion thereof;

12 (4) the estimated date that construction will commence and the
13 estimated duration of construction;

14 (5) a site plan of the proposed industrial energy facility or expansion
15 thereof;

16 (6) the names and addresses of the landowners of record whose land
17 or interest therein is proposed to be acquired for the industrial energy
18 facility or expansion thereof;

19 (7) a narrative including how any noise, soil erosion, dust, water
20 quality, safety issues and fire risks will be addressed by the applicant;

21 (8) a description of the proposed decommissioning plan for the
22 facility, which shall comply with the provisions of section 10, and
23 amendments thereto; and

24 (9) any other information as may be required by the commission.

25 (b) An applicant shall have the burden of proof to establish by a
26 preponderance of evidence that the development, construction,
27 modification, operation, maintenance and decommissioning of the
28 proposed facility will:

29 (1) Comply with all applicable laws and rules and regulations and
30 orders of the commission;

31 (2) comply with the minimum setback distances established pursuant
32 to section 8, and amendments thereto, or any more restrictive setback
33 distances imposed pursuant to any local planning and land use laws,
34 ordinances, regulations or agreements that establish more restrictive
35 setback distances relating to such facility;

36 (3) comply with the code of conduct and agricultural mitigation
37 protocols established pursuant to section 9, and amendments thereto;

38 (4) comply with the decommissioning requirements established
39 pursuant to section 10, and amendments thereto, or any more restrictive
40 decommissioning requirements established by the commission;

41 (5) not pose a threat of serious injury to the environment or to the
42 social and economic condition of any person who resides within or near
43 the proposed location of the facility;

1 (6) not substantially impair the health, safety or welfare of
2 inhabitants; and

3 (7) not be located in a county that prohibits the construction of an
4 industrial energy facility pursuant to section 3, and amendments thereto.

5 (c) Prior to filing a permit application pursuant to this section, a
6 prospective applicant shall file with the commission a notification of intent
7 to file such application not less than 60 days prior to filing such
8 application.

9 (d) Upon the filing of a permit application, the commission shall hold
10 a public hearing on such application, which shall not be more than 90 days
11 after the date that the application was filed, to determine whether the
12 application and the proposed activities that will be conducted by the
13 applicant comply with the requirements of this act and any rules and
14 regulations adopted thereunder. The commission shall hold the public
15 hearing in the county where the industrial energy facility or a majority of
16 the industrial energy facility is proposed to be located.

17 (e) (1) The commission shall publish a notice of the time, place and
18 subject matter of the public hearing as follows:

19 (A) On the commission's website, for not less than the 30 days prior
20 to the public hearing; and

21 (B) in a newspaper of general circulation in the county where the
22 industrial energy facility is proposed to be located, once each week for two
23 consecutive weeks, the last publication of which shall not be less than five
24 days before the public hearing.

25 (2) The commission shall provide written notice by certified mail of
26 the public hearing to all landowners described in subsection (a)(6). Such
27 written notice shall be postmarked not later than 20 days prior to the
28 hearing date.

29 (f) The commission shall conduct an evidentiary hearing on a permit
30 application filed pursuant to this section at such time and place as the
31 commission deems appropriate. All such hearings shall be in accordance
32 with the provisions of the Kansas administrative procedure act and
33 completed within 30 days after the commencement thereof.

34 (g) The commission shall establish a permit application fee that is
35 sufficient to compensate the commission for the actual cost of providing
36 the notices required by this section and to investigate, review, hear and
37 process the application. The commission shall remit all moneys received
38 by the commission pursuant to this section to the state treasurer in
39 accordance with the provisions of K.S.A. 75-4215, and amendments
40 thereto. Upon receipt of each such remittance, the state treasurer shall
41 deposit the entire amount in the state treasury and credit such amount to
42 the public service regulation fund.

43 (h) The commission shall issue a final order upon a permit

1 application and render a decision with respect to whether the application
2 and the proposed activities that will be conducted by the applicant will
3 comply with the requirements of this act and any rules and regulations
4 adopted thereunder compliance with the location of the proposed industrial
5 energy facility. In addition to legal compliance, the commission may
6 consider the impacts and benefits to Kansas residents, the affected county
7 or counties, energy consumers in Kansas, energy consumers in other states
8 and economic development.

9 (i) The commission shall have authority to:

10 (1) Order and enforce any additional or more restrictive terms and
11 conditions as the commission may deem just and reasonable to best protect
12 the rights of any interested party or those of the local inhabitants or general
13 public. Such additional or more restrictive terms and conditions may relate
14 to the development, construction, modification, operation, maintenance or
15 decommissioning of the industrial energy facility; and

16 (2) verify compliance with and enforce global or nationally
17 recognized standards and technical specifications for the development,
18 construction, modification, operation, maintenance or decommissioning of
19 an industrial energy facility.

20 (j) The commission shall issue a final order on the permit application
21 within 180 days after the date that the application was filed.

22 (k) (1) An initial permit shall not be required for any industrial energy
23 facility that was:

24 (A) Constructed on or before July 1, 2026; or

25 (B) authorized to be constructed by a board of county commissioners
26 prior to July 1, 2026, through:

27 (i) The issuance of a building, zoning or development permit that
28 authorizes the construction of the facility pursuant to zoning regulations;

29 (ii) the issuance of a conditional or special use permit that authorizes
30 the construction of the facility notwithstanding zoning regulations; or

31 (iii) the execution of a contractual agreement between the county and
32 the industrial energy facility owner that establishes terms, conditions,
33 rights and remedies relating to the development and construction of such
34 industrial energy facility within the county.

35 (2) A permit shall be required for any industrial energy facility
36 specified in this subsection prior to any site preparation for or construction
37 of any new expansion of any such industrial energy facility.

38 (l) Any permit application, documents submitted to the commission
39 in relation thereto and orders of the commission relating to such permit
40 shall be a public record and disclosed upon request.

41 Sec. 6. (a) Any industrial energy facility owner of an industrial energy
42 facility that is not required to obtain an initial permit pursuant to section
43 5(k), and amendments thereto, shall register such facility with the

1 commission by filing an initial facility registration statement to the
2 commission. Such initial facility registration statement shall be filed on or
3 before December 31, 2026, and include the following:

- 4 (1) The name, address and contact information of the registrant;
- 5 (2) a description of the nature, purpose and location of the facility;
- 6 (3) the current site layout and detailed footprint of the industrial
7 energy facility;
- 8 (4) the names and addresses of the landowners of record whose land
9 or interest therein has been acquired for the industrial energy facility;
- 10 (5) a description of the decommissioning plan that is established for
11 such facility pursuant to section 10, and amendments thereto; and
- 12 (6) any other information as may be required by the commission.

13 (b) The commission shall require an industrial energy facility owner
14 to file an updated and current facility registration statement not less than
15 once every five years following the issuance of any permit pursuant to
16 section 5, and amendments thereto, or the filing of an initial registration
17 statement pursuant to subsection (a). Such updated and current facility
18 registration statement shall include the following information:

- 19 (1) The name, address and contact information of the registrant;
- 20 (2) a description of the nature, purpose and location of the facility;
- 21 (3) the current site area and detailed footprint of the industrial energy
22 facility;
- 23 (4) the names and addresses of the landowners of record whose land
24 or interest therein has been acquired for the industrial energy facility;
- 25 (5) written assurance that the site area and footprint of the industrial
26 energy facility has not been modified from the site area or footprint that
27 was last approved by the commission pursuant to any permit issued for the
28 facility pursuant to section 5, and amendments thereto, or shown on the
29 facility registration statement provided to the commission pursuant to this
30 section;
- 31 (6) a description of the decommissioning plan that is established for
32 such facility pursuant to section 10, and amendments thereto; and
- 33 (7) any other information as may be required by the commission.

34 (c) The commission shall establish a facility registration statement fee
35 that is sufficient to compensate the commission for the actual cost to
36 investigate, review and process the facility registration statement. The
37 commission shall remit all moneys received by the commission pursuant
38 to this section to the state treasurer in accordance with the provisions of
39 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
40 remittance, the state treasurer shall deposit the entire amount in the state
41 treasury and credit such amount to the public service regulation fund.

42 (d) Any facility registration statement and documents submitted to
43 the commission in relation thereto shall be a public record and disclosed

1 upon request.

2 Sec. 7. (a) In addition to the information required to be provided by
3 the industrial energy facility owner for an industrial energy facility that is
4 permitted or registered pursuant to this act, the commission may require an
5 industrial energy facility owner to provide the following information to the
6 commission:

7 (1) The number and locations within the state of other industrial
8 energy facilities that are owned or operated by the industrial energy facility
9 owner;

10 (2) whether the industrial energy facility owner is currently planning
11 to develop or construct any new industrial energy facilities in the state and
12 the number and location of such planned facilities;

13 (3) the size and dimensions, the energy generation or storage
14 capacity, average electric output and anticipated future electric output of
15 the industrial energy facility owner's facilities; and

16 (4) all names and addresses of the industrial energy facility owners.

17 (b) Any such information provided to the commission pursuant to this
18 section shall be a public record that is open to public inspection pursuant
19 to the open records act. Such information shall be presented to the
20 commission in the manner required by the commission. The purpose of
21 such information is to allow landowners and policy makers the ability to
22 identify the location, dimensions, capacity and the amount of energy
23 generated by current industrial energy generation facilities located in the
24 state and to provide information on future planning and development.

25 Sec. 8. (a) Any new industrial energy facility or expansion of an
26 existing industrial energy facility shall meet or exceed the setback
27 distances established pursuant to this section.

28 (b) For a new industrial wind energy facility or expansion of an
29 existing industrial wind energy facility that includes the siting and
30 construction of any new wind turbine, no such wind turbine shall be
31 located closer than any of the following distances, as measured from the
32 ground-level center of the turbine:

33 (1) 1.1 times the maximum blade tip height of the turbine to the
34 nearest boundary of a public road right-of-way;

35 (2) 1.1 times the maximum blade tip height of the turbine to the
36 nearest boundary of a nonparticipating property;

37 (3) 4.0 times the maximum blade tip height to the nearest point on the
38 outside wall of any habitable dwelling, church, school, adult care home,
39 medical care facility, child care facility, library, community center, public
40 building, office building, confined feeding facility or licensed food service
41 or lodging establishment; and

42 (4) 5280 feet to the nearest boundary of any state park, state lake,
43 wildlife management area or wildlife refuge as defined in K.S.A. 65-171d,

1 and amendments thereto.

2 (c) For a new industrial solar energy conversion system or expansion
3 of an existing industrial solar energy conversion system, no part of the site
4 area or footprint of any such system shall be located closer than the
5 following distances, as measured from the nearest outside boundary of
6 such site area:

7 (1) 50 feet from the nearest public road right-of-way;
8 (2) 50 feet from the nearest boundary of a nonparticipating property;
9 and

10 (3) 300 feet from the nearest point on the outside wall of any
11 habitable dwelling, church, school, adult care home, medical care facility,
12 child care facility, library, community center, public building, office
13 building, confined feeding facility or licensed food service or lodging
14 establishment.

15 (d) For a new industrial battery energy storage system or expansion
16 of an existing industrial battery energy storage system, no such part of the
17 site area or footprint of such system shall be located closer than the
18 following distances, as measured from the nearest outside boundary of
19 such site area:

20 (1) 50 feet from the nearest public road right-of-way;
21 (2) 50 feet from the nearest boundary of a nonparticipating property;
22 and

23 (3) 300 feet from the nearest point on the outside wall of any
24 habitable dwelling, church, school, adult care home, medical care facility,
25 child care facility, library, community center, public building, office
26 building, confined feeding facility or licensed food service or lodging
27 establishment.

28 (e) Nothing in this section shall prohibit the establishment, operation
29 or enforcement of more restrictive setback distances pursuant to:

30 (1) Any planning and land use laws and regulations adopted by a city
31 or county pursuant to K.S.A. 12-741 et seq., and amendments thereto;

32 (2) an agreement between a county or city and an industrial energy
33 facility owner;

34 (3) an agreement between a landowner and an industrial energy
35 facility owner; or

36 (4) an order of the commission in any permit proceeding under
37 section 5, and amendments thereto.

38 (f) The setback distance requirements established pursuant to this
39 section shall not apply with respect to any particular structure listed in this
40 section if the industrial energy facility owner obtains a written agreement
41 from the owner of any such structure that is within such setback distance
42 stating that such owner is aware of the construction or expansion, has no
43 objections to such construction or expansion and authorizing the

1 construction or expansion within such setback distance. Any such written
2 agreement shall be filed in the register of deeds office of the county where
3 the structure that such agreement pertains is located.

4 Sec. 9. (a) The commission shall establish a code of conduct for the
5 development, construction, modification, operation, maintenance and
6 decommissioning of industrial energy facilities. The code of conduct shall,
7 at a minimum, contain provisions that require each industrial energy
8 facility owner to:

- 9 (1) Be truthful and honest in all communications with landowners;
- 10 (2) be transparent about the industrial energy facility project;
- 11 (3) provide appropriate contact information for the industrial energy
12 facility owner and any employees, agents, contractors, subcontractors or
13 assigns thereof that are associated with the project;
- 14 (4) ensure that all communications with landowners do not contain
15 any threat or coercion;
- 16 (5) vacate the property of or cease communications by the request of
17 any landowner who requests that the industrial energy facility owner, or
18 any employees, agents, contractors, subcontractors or assigns thereof,
19 vacate the landowner's property or cease communications with the
20 landowner;
- 21 (6) not disclose communications from a landowner unless otherwise
22 agreed in writing;
- 23 (7) provide and make accessible project maps to the public during the
24 permitting process;
- 25 (8) compensate landowners for any and all damages to land and
26 agricultural operations resulting from the development, construction,
27 operation or decommissioning of the project and establish procedures to
28 determine and calculate compensation for such damages;
- 29 (9) remediate communication circuits that are diminished or disrupted
30 due to communication interference caused by the project; and
- 31 (10) indemnify and hold harmless any affected landowner or tenant,
32 and any heirs, successors, legal representatives or assigns thereof, from
33 any and all liability associated with the development, construction,
34 modification, operation, maintenance or decommissioning of the industrial
35 energy facility, unless such liability arises from the intentional or willful
36 acts of the indemnitee.

37 (b) The commission, after consultation with the Kansas department of
38 agriculture, shall establish agricultural impact mitigation protocols that
39 shall apply with respect to the development, construction, operation,
40 maintenance and decommissioning of industrial energy facilities. The
41 agricultural impact mitigation protocols shall contain, at a minimum,
42 provisions that require each industrial energy facility owner to:

- 43 (1) Provide advance notice to and coordinate with any landowner or

1 tenant whenever the industrial energy facility owner needs to access
2 private property;

3 (2) designate for the industrial energy facility owner one or more
4 contacts who have experience in agriculture and may be contacted when
5 any agricultural impact mitigation work is not sufficient;

6 (3) establish standards for facilities and support structures to
7 minimize the impact to agricultural land and operations;

8 (4) establish procedures to mitigate and address any impacts to
9 important agricultural improvements caused by the project, including, but
10 not limited to, impacts to drainage tiles, terraces and irrigation systems and
11 lightning and stray voltage mitigation measures;

12 (5) establish soil protection measures, including, but not limited to,
13 decompaction, fertilization, stabilization, repairs to damaged soil, erosion
14 prevention and removal of construction debris;

15 (6) establish soil restoration measures that shall apply following
16 construction, operational and decommissioning activities, including, but
17 not limited to, segregation and replacement of topsoil and reestablishment
18 of the vegetative growth that existed prior to disturbance;

19 (7) adhere to scientific standards for all agricultural impact mitigation
20 work, such as the standards established by the natural resources
21 conservation service, the United States department of agriculture farm
22 service agency, agricultural extension offices or land grant universities;

23 (8) establish procedures for installation and maintenance of any
24 necessary gates to the facility or facility structures;

25 (9) for any project involving the construction of overhead
26 transmission or generation tie lines, construct such lines with an adequate
27 line height to ensure that any existing agricultural operations may continue
28 under and around such line in a safe manner;

29 (10) establish procedures for tree and brush removal, including, but
30 not limited to, compensation for removal of trees with commercial value;
31 and

32 (11) establish procedures for controlling noxious weeds and other
33 growth within any lease or easement.

34 Sec. 10. (a) Each industrial energy facility owner in this state,
35 including any industrial energy facility owner that obtains a permit
36 pursuant to section 5, and amendments thereto, or registers with the
37 commission pursuant to section 6, and amendments thereto, shall be
38 responsible for the full and complete decommissioning or partial
39 decommissioning of an industrial energy facility in accordance with this
40 section.

41 (b) (1) An industrial energy facility owner shall, upon the cessation of
42 operations of the industrial energy facility, provide for the full and
43 complete decommissioning of the industrial energy facility. The industrial

1 energy facility owner shall complete the full and complete
2 decommissioning of any such facility not later than one year following the
3 date of such cessation of operations.

4 (2) An industrial energy facility owner shall, upon the cessation of
5 operations of any individual generating unit or energy storage unit of an
6 industrial energy facility, provide for the partial decommissioning of the
7 industrial energy facility. The industrial energy facility owner shall
8 complete the partial decommissioning not later than one year following the
9 date of such cessation of operations.

10 (c) The commission shall require each such industrial energy facility
11 owner to establish and maintain a sufficient, efficient and enforceable
12 decommissioning plan for the facility to ensure the full and complete or
13 partial decommissioning of the facility upon the cessation of operations of
14 the facility or any part thereof. Any such decommissioning plan and
15 updates thereto shall be prepared, signed and sealed by a professional
16 engineer who is licensed to practice in Kansas. Each industrial energy
17 facility owner shall provide to the commission a decommissioning plan
18 that contains the following information:

19 (1) The name, address and contact information for the industrial
20 energy facility owner and the name, address and contact information of
21 each landowner that owns property where the industrial energy facility is
22 located;

23 (2) a narrative that describes the planned sequence for the
24 decommissioning and a schedule for the completion of decommissioning;

25 (3) a description of whether the decommissioned materials will be
26 disposed of, reused or recycled;

27 (4) a description of how the disposal of solid or hazardous wastes will
28 be permitted and accomplished;

29 (5) a description of the materials that may be subject to salvage,
30 including the estimated salvage value of such materials;

31 (6) a narrative that describes the steps that will be taken to return and
32 restore any land disturbed or changed as a result of the construction and
33 operation of the facility to the useful condition that existed prior to the
34 construction and operation of the facility;

35 (7) a cost estimate for the full and complete decommissioning of the
36 industrial energy facility in accordance with this section;

37 (8) a description of the financial assurance mechanism that the
38 industrial energy facility owner shall maintain to comply with the financial
39 assurance requirements of this section; and

40 (9) any other information determined necessary by the commission.

41 (d) The commission shall require and order an industrial energy
42 facility owner to establish and maintain financial assurance in a form and
43 amount that is sufficient to implement the decommissioning plan for the

1 industrial energy facility. The industrial energy facility owner shall provide
2 the financial assurance in an amount determined as necessary by the
3 commission in the form of an irrevocable standby letter of credit,
4 performance bond, surety bond or unconditional payment guarantee
5 executed by the parent company of the facility owner. The financial
6 assurance shall at all times be accessible by the commission to provide for
7 the decommissioning of the industrial energy facility should the owner not
8 be financially able to complete the decommissioning.

9 (e) The commission shall require each industrial energy facility
10 owner to provide to the commission not less than once every five years:

11 (1) An updated estimate of the cost to decommission the facility; and
12 (2) documentation that the financial assurance maintained by the
13 industrial energy facility owner is sufficient to cover such cost.

14 (f) Nothing in this section shall prohibit the establishment, operation
15 or enforcement of more restrictive decommissioning requirements
16 pursuant to:

17 (1) Any planning and land use laws and regulations adopted by a city
18 or county pursuant to K.S.A. 12-741 et seq., and amendments thereto;

19 (2) an agreement between a county or city and an industrial energy
20 facility owner;

21 (3) an agreement between a landowner and an industrial energy
22 facility owner; or

23 (4) an order of the commission in any permit proceeding under
24 section 5, and amendments thereto.

25 Sec. 11. (a) If the commission finds that any industrial energy facility
26 owner has violated the provisions of this act, any rules and regulations
27 adopted by the commission or any permit or order of the commission, in
28 addition to any other penalties imposed by law, the commission may:

29 (1) Issue a cease and desist order; or

30 (2) impose a civil penalty not to exceed \$10,000 per violation. Such
31 penalty shall constitute an actual and substantial economic deterrent to the
32 violation for which the penalty is assessed. In the case of a continuing
33 violation, the commission may deem every day that such violation
34 continues as a separate violation.

35 (b) No cease and desist order or civil penalty shall be imposed
36 pursuant to this section except upon the written order of the commission to
37 the industrial energy facility owner who committed the violation. The
38 order shall state the violation, the penalty imposed and the right to appeal
39 such order to the commission. Any such facility owner, within 30 days
40 after service of such order, may make written request to the commission
41 for a hearing. The commission shall conduct a hearing in accordance with
42 the provisions of the Kansas administrative procedure act within 30 days
43 following the receipt of such request.

1 (c) The commission may order an industrial energy facility owner to
2 pay any costs and reasonable attorney fees incurred by the commission for
3 any action brought by the commission pursuant to this section. The
4 commission may collect interest on any portion of any penalty, costs and
5 attorney fees that remain unpaid for more than 30 days after the
6 assessment of the penalty, at the rate provided by K.S.A. 16-204, and
7 amendments thereto, for interest on judgments.

8 (d) All moneys received by the commission from penalties imposed
9 and costs and attorney fees assessed pursuant to this section shall be
10 remitted to the state treasurer in accordance with the provisions of K.S.A.
11 75-4215, and amendments thereto. Upon receipt of each such remittance,
12 the state treasurer shall deposit the entire amount in the state treasury to
13 the credit of the public service regulation fund.

14 Sec. 12. (a) Any order of the commission established pursuant to this
15 act is subject to review in accordance with the Kansas judicial review act.

16 (b) No cause of action arising out of any order of the commission
17 established pursuant to this act shall accrue in any court to any party,
18 unless such party shall have petitioned for reconsideration in accordance
19 with the provisions of K.S.A. 77-529, and amendments thereto.

20 Sec. 13. The commission may adopt rules and regulations to
21 administer and enforce the provisions of this act.

22 Sec. 14. This act shall take effect and be in force from and after its
23 publication in the statute book.