

HOUSE BILL No. 2728

By Committee on Energy, Utilities and Telecommunications

Requested by Representative Hoheisel on behalf of Consumer Energy Alliance

2-5

1 AN ACT concerning energy; relating to the siting and permitting of certain
2 energy facilities; requiring the state corporation commission to
3 establish uniform siting and permitting standards for such energy
4 facilities; establishing requirements and timelines for local government
5 actions relating to such energy facilities; requiring such energy
6 facilities to establish a decommissioning plan and maintain financial
7 assurance; prohibiting the imposition of requirements that impose an
8 undue burden on the construction of an energy facility; establishing
9 requirements for judicial review of agency actions and actions of local
10 governments; prohibiting the commission from engaging in ex parte
11 communications with energy facility applicants or opponents and
12 requiring disclosure thereof; authorizing the commission to adopt rules
13 and regulations.

14

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

16 Section 1. This act shall be known and may be cited as the Kansas
17 energy facility siting and permit certainty act.

18 Sec. 2. (a) The legislature finds that energy facility siting and
19 permitting processes should be transparent, timely, predictable and based
20 on objective standards.

21 (b) The purpose of this act is to:

22 (1) Ensure timely, transparent and predictable siting and permitting of
23 energy facilities that are necessary to meet state energy, reliability and
24 economic goals;

25 (2) provide a uniform standard governing the processing and review
26 of energy facility applications to avoid unnecessary delay, duplication and
27 inconsistent rules;

28 (3) preserve lawful local health, safety and environmental protections
29 that are not unreasonably burdensome; and

30 (4) prevent regulatory arbitrage and forum-shopping that frustrates
31 timely project review.

32 (c) This act shall not be construed to preempt or eliminate local land
33 use regulations and controls or alter, limit or supersede the authority of the
34 federal energy regulatory commission under federal law.

35 Sec. 3. As used in this act:

1 (a) "Applicant" means any person, corporation, partnership,
2 association, limited liability company, cooperative or governmental entity
3 seeking authorization to site, permit, construct or operate an energy
4 facility.

5 (b) "Complete application" means the submission of materials
6 identified by applicable statute or local ordinance or resolution that are
7 reasonably necessary to evaluate the project's conformity with local
8 standards.

9 (c) "Decommissioning" means the removal of all aboveground
10 physical material related to a commercial wind energy facility, a
11 commercial solar energy facility or energy storage system, except for
12 supporting facilities if removal of such supporting facilities has been
13 waived by the owner of the property on which such material is located and
14 underground collector circuit facilities and any physical material located
15 36 inches or more below ground level.

16 (d) "Energy facility" means any electric generation facility, energy
17 storage facility or energy conversion facility and any associated substation
18 or electric transmission generation tie line, including electric transmission
19 facilities subject to review under K.S.A. 66-1,178, and amendments
20 thereto.

21 (e) "Local government" means a county, city, township or other
22 political subdivision of the state with land use, zoning or local permitting
23 authority.

24 (f) "Moratorium" means an ordinance, resolution or other local
25 government action that forbids or suspends receiving, processing or
26 approving applications for energy facilities for a specified or unspecified
27 period of time.

28 Sec. 4. (a) No person or entity shall commence construction of an
29 energy facility within the state unless such person or entity has obtained
30 any certificate, permit or approval required pursuant to this act or any
31 other law, rule and regulation or local land use regulations and controls.

32 (b) Energy facilities shall be constructed, operated and maintained in
33 accordance with the terms of such certificate, permit or approval.

34 Sec. 5. (a) No local government shall adopt a moratorium applicable
35 to applications for energy facilities for longer than 30 days without
36 approval of the state corporation commission. Any moratorium exceeding
37 30 days shall be justified in writing, based on a showing of an imminent
38 threat to public health or safety and approved by the state corporation
39 commission following notice to the public and an opportunity for public
40 comment.

41 (b) No moratorium, including any extensions or renewals thereof,
42 shall remain in effect for more than 120 days in total duration unless
43 specifically authorized by the state corporation commission upon a finding

1 of continuing necessity and substantial progress toward completion of the
2 approved work plan.

3 (c) As a condition of approval for any moratorium exceeding 30 days,
4 the local government shall submit to the state corporation commission a
5 work plan and timeline outlining specific actions to be undertaken during
6 the moratorium period, including drafting, amending or adopting
7 ordinances, conducting studies or performing public engagement. The
8 work plan shall identify key milestones and expected completion dates.

9 (d) The state corporation commission may revoke or modify the
10 commission's prior approval of a moratorium if the local government fails
11 to make reasonable progress consistent with the approved timeline or the
12 justification for the moratorium no longer exists.

13 (e) No moratorium shall apply retroactively to invalidate rights or
14 approvals vested under state law or under an application that was complete
15 and on file prior to adoption of the moratorium, unless otherwise required
16 by a court of competent jurisdiction.

17 Sec. 6. (a) Energy facility siting and permitting shall be governed by
18 uniform statewide standards established by the state corporation
19 commission through rules and regulations adopted by the commission.

20 (b) Local governments may adopt and enforce reasonable land use
21 regulations and controls applicable to energy facilities if such regulations
22 and controls:

23 (1) Are not inconsistent with state law or the rules and regulations of
24 the state corporation commission;

25 (2) do not impose requirements that effectively prohibit or
26 unreasonably delay development of energy facilities; and

27 (3) are supported by written findings based on objective and
28 nondiscriminatory criteria.

29 (c) Where a conflict exists between a local requirement and any
30 applicable law or rule and regulation, the state law or rule and regulation
31 shall control.

32 Sec. 7. (a) A local government may temporarily suspend acceptance
33 or processing of applications for energy facilities for a period not to exceed
34 30 days.

35 (b) Any suspension exceeding 30 days shall be:

36 (1) Supported by written findings demonstrating a specific and
37 imminent threat to public health or safety; and

38 (2) submitted to the state corporation commission for review.

39 (c) The state corporation commission may determine that an extended
40 suspension is not justified and may direct the local government to resume
41 processing of applications.

42 Sec. 8. (a) Upon receipt of a complete application for the construction
43 of an energy facility, a local government shall:

1 (1) Accept or reject the application for completeness within 30 days;
2 and

3 (2) if accepted for completeness, approve, approve with conditions or
4 deny the application within 120 days of such acceptance.

5 (b) A local government may grant one extension of not more than 60
6 days upon written notice to the applicant specifying the reasons that
7 additional technical review is required. The state corporation commission
8 may toll these periods for good cause as defined pursuant to rules and
9 regulations adopted by the commission.

10 (c) Failure of a local government to act within the time frames
11 established in this section shall allow the applicant to request a review by
12 the state corporation commission.

13 (d) Each local government shall publish a checklist of the steps and
14 documents that are necessary for a complete application. Such checklist
15 shall be published on the local government's website on or before October
16 1, 2026, and shall be updated as may be necessary to reflect any
17 subsequent revisions to such checklist. If a local government does not
18 maintain a website, the checklist shall be provided to an applicant not later
19 than five days after the local government's receipt of an application. If a
20 checklist is not provided within the applicable timeframe, the application
21 shall be deemed complete for purposes of initiating review timelines under
22 this act.

23 Sec. 9. (a) As a condition of any certificate, permit or approval under
24 this act with respect to an energy facility, an applicant shall submit a
25 decommissioning plan demonstrating the applicant's ability to safely and
26 timely decommission the energy facility at the end of such energy facility's
27 useful life. The decommissioning plan shall include:

28 (1) A description of decommissioning activities to be undertaken,
29 including the removal of aboveground equipment and site restoration
30 measures;

31 (2) a projected timeline for commencement and completion of
32 decommissioning;

33 (3) an estimate of the actual and necessary costs to complete
34 decommissioning, net of reasonable anticipated salvage value; and

35 (4) a description of the financial assurance mechanism proposed
36 pursuant to subsection (e).

37 (b) An energy facility shall be presumed to have reached the end of
38 such energy facility's useful life when the such energy facility fails to
39 generate, store or transmit electricity for a continuous period of 360 days.
40 Upon application by the energy facility owner, the state corporation
41 commission or applicable local government shall grant reasonable
42 extensions of such time upon a showing of good faith efforts to restore the
43 energy facility to service within a reasonable timeframe.

1 (c) When decommissioning is required pursuant to this act:

2 (1) Decommissioning activities shall commence not later than 360
3 days after the energy facility is determined to have reached the end of such
4 energy facility's useful life; and

5 (2) decommissioning shall be completed not later than 540 days after
6 such determination unless extended for good cause.

7 (d) Decommissioning shall include the removal of aboveground
8 physical materials associated with the energy facility and restoration of the
9 site to a condition reasonably comparable to such energy facility's
10 preconstruction use, except if an affected landowner has entered into a
11 written agreement for alternate decommissioning requirements.
12 Underground facilities located 36 inches or more below ground may
13 remain in place unless removal is required by contract or environmental
14 law.

15 (e) The state corporation commission or applicable local government
16 may require reasonable financial assurance to ensure the availability of
17 funds necessary to complete decommissioning. Financial assurance may
18 be provided at the energy facility owner's election or by bond, escrow
19 account, irrevocable letter of credit, parent guaranty or other commercially
20 reasonably instrument. The financial assurance shall not exceed the
21 estimated actual and necessary cost of decommissioning, net of salvage
22 value. The state corporation commission or applicable local government
23 may require that the financial assurance cost estimate be prepared by a
24 qualified third party with relevant expertise. The state corporation
25 commission or applicable local government may review and adjust the
26 amount of financial assurance not more than once every five years to
27 reflect material changes in estimated decommissioning costs.

28 (f) If an energy facility owner fails to complete decommissioning
29 pursuant to this section, the state corporation commission or applicable
30 local government may access the financial assurance solely for the purpose
31 of completing decommissioning activities.

32 (g) Upon completion of decommissioning, the energy facility owner
33 shall file a notice of completion with the state corporation commission or
34 applicable local government not later than 90 days following the
35 completion of decommissioning.

36 (h) A local government may impose reasonable decommissioning
37 requirements applicable to energy facilities, if such requirements are
38 consistent with this section and do not materially conflict with statewide
39 standards and rules and regulation established pursuant to this act.

40 Sec. 10. (a) Any local requirement imposed by any regulation,
41 ordinance, condition or permit that imposes an undue burden on an energy
42 facility shall be subject to review by the state corporation commission. A
43 local requirement imposes an undue burden on an energy facility if:

1 (1) The local requirement has the effect of prohibiting, unreasonably
2 delaying or unreasonably increasing the cost of an energy facility;

3 (2) the local requirement is not supported by substantial evidence in
4 the administrative record demonstrating a legitimate, material public
5 health, safety or environmental objective;

6 (3) there is a reasonable, less burdensome alternative that would
7 accomplish the legitimate objective;

8 (4) the local requirement conflicts with state laws or rules and
9 regulations governing energy facility siting; or

10 (5) the local requirement discriminates against an energy facility on
11 the basis of energy source or technology type without a demonstrated and
12 material justification related to site-specific impacts.

13 (b) A local requirement that is neutral, generally applicable and
14 supported by substantial evidence of a legitimate public interest shall not
15 be deemed to create an undue burden on an energy facility solely because
16 such requirement increases compliance costs.

17 (c) If the state corporation commission finds that any such local
18 requirement imposes an undue burden on an energy facility or
19 substantially conflicts with state law or the rules and regulations of the
20 commission, the commission may:

21 (1) Order the local requirement unenforceable as applied to the
22 project;

23 (2) issue uniform conditions applicable to the project that address the
24 conflict; or

25 (3) require the local government to amend or reconsider the local
26 requirement within a specific time period consistent with state standards.

27 (d) When a project raises issues beyond the technical or regulatory
28 expertise of the local government, including, but not limited to, electric
29 system reliability or regional transmission impacts, the state corporation
30 commission shall have authority to resolve such issues under applicable
31 state standards.

32 (e) If a court finds that a local requirement imposes an undue burden,
33 relief may include invalidation of the requirement as applied to the project,
34 appropriate injunctive relief or such other relief as authorized by law.

35 Sec. 11. (a) Only persons or entities with a direct, substantial and
36 legally protectable interest affected by a siting decision shall have standing
37 to intervene in any state or local energy facility siting proceeding or to
38 seek judicial review.

39 (b) In determining standing, a court shall consider whether the person
40 or organization demonstrates that:

41 (1) The person or organization's own interests, or those of its
42 members, will be directly and specifically affected by the proposed
43 project;

1 (2) the alleged injury is concrete and particularized, and not abstract,
2 generalized or purely ideological; and

3 (3) the alleged injury is fairly traceable to the challenged action and
4 capable of redress by the court.

5 (c) Venue for judicial review shall be in the county where the
6 proposed energy facility is located. A person or organization seeking to file
7 or intervene in such an action outside such county shall demonstrate a
8 direct and substantial connection to the county in which venue is sought.

9 (d) The state corporation commission may request consolidation of
10 related actions and transfer of venue to promote judicial efficiency and
11 avoid inconsistent rulings.

12 (e) If the court determines that an action lacks standing or is frivolous
13 or brought primarily for purposes of delay, the court may award costs as
14 otherwise authorized by law.

15 (f) Nothing in this section shall prohibit or limit preapplication
16 meetings or coordination between an applicant and the state corporation
17 commission.

18 (g) Any decision or order of the state corporation commission issued
19 pursuant to this act shall be subject to review in accordance with the
20 Kansas judicial review act. In any judicial review of any decision or order
21 of the state corporation commission, the court shall review factual
22 determinations of the state corporation commission under the substantial
23 evidence standard of review. Questions of law shall be reviewed *de novo*.

24 (h) In any such judicial review, a court may order declaratory or
25 injunctive relief, modification of local conditions or such other relief as
26 authorized by law.

27 Sec. 12. (a) Except as otherwise provided in subsection (b), members
28 of the state corporation commission and staff who serve a substantive role
29 in a contested case or adjudicatory decision-making process shall not
30 engage in *ex parte* communications with applicants or opponents, or any
31 agents thereof, regarding the merits of a pending matter unless the
32 communication is:

33 (1) Disclosed on the public record at the next convened hearing or
34 meeting; and

35 (2) reduced to writing and included in the administrative record.

36 (b) Ministerial scheduling, administrative clarifications or procedural
37 communications are permitted if promptly placed on the public record and
38 summarized at the next public meeting. Technical exchanges that do not
39 involve advocacy on contested substantive issues may occur between
40 commission staff and applicants but shall be documented in the
41 administrative record.

42 (c) Any such commissioner or staff member who receives an
43 undisclosed, *ex parte* substantive communication shall disclose the

1 communication on the record. Upon a showing of prejudicial influence,
2 the commissioner or staff member may be disqualified from further
3 participation in the proceeding.

4 (d) The state corporation commission shall maintain an administrative
5 record for each proceeding. To the extent practicable and consistent with
6 the Kansas open records act, the record shall be made available to the
7 public and include submissions, written communications, hearing
8 transcripts, exhibits, staff reports, technical studies and disclosed ex parte
9 communications.

10 (e) Nothing in this section authorizes communications or
11 deliberations that would otherwise violate the Kansas open meetings act.
12 All substantive deliberations involving a quorum of the state corporation
13 commission shall occur in a publicly noticed meeting in compliance with
14 applicable law.

15 Sec. 13. An applicant for an energy facility shall file with the state
16 corporation commission any relevant state or federal environmental review
17 documents, including federal national environmental policy act documents
18 to the extent applicable. The state corporation commission may coordinate
19 review of such materials to reduce duplication and meet statutory
20 deadlines to the extent consistent with state and federal law.

21 Sec. 14. The state corporation commission shall adopt rules and
22 regulations to administer the provisions of this act and establish uniform
23 statewide standards for the siting and permitting of energy facilities.

24 Sec. 15. If any provision of this act or the application thereof to any
25 person or circumstance is held invalid, the invalidity shall not affect other
26 provisions or applications of this act that can be given effect without the
27 invalid provision or application, and to this end, the provisions of this act
28 are declared to be severable.

29 Sec. 16. This act shall take effect and be in force from and after its
30 publication in the statute book.