

## SENATE BILL No. 417

By Committee on Utilities

1-28

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  
12 approve and issue 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  
35 of both statewide and local concern and interest.

36 Sec. 2. As used in sections 1 through 12, and amendments thereto:

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

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

9       (c) "Expansion" means any:

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

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

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

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

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

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

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

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

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

36       (1) Industrial battery energy storage system;

37       (2) industrial solar energy conversion system; or

38       (3) industrial wind energy conversion system.

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

40       (1) Has a direct ownership interest in an industrial energy facility  
41 regardless of whether the person or entity is involved in acquiring the  
42 necessary rights, permits and approvals or planning for the construction  
43 and operation of the facility; or

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

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

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

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

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

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

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

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

42       Sec. 3. (a) On and after July 1, 2026, the board of county  
43 commissioners, by resolution, may permit or deny the construction of an

1 industrial energy facility within the county. Such resolution shall be  
2 published once each week for two consecutive weeks in a newspaper of  
3 general circulation in the county. The resolution shall take effect 60 days  
4 after final publication unless a valid protest petition, signed by not less  
5 than 5% of the qualified electors of the county, is filed with the county  
6 election officer within 60 days of the final publication of the resolution.

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

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

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

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

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

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

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

43 (g) The election provided for by this section shall be conducted, and

1 the votes counted and canvassed, in the manner provided by law for  
2 question submitted elections of the county.

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

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

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

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

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

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

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

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

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

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

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

41 Sec. 5. (a) On and after July 1, 2026, no person or entity shall,  
42 without first obtaining a permit from the commission in accordance with  
43 this section, begin site preparation for or construction of a new industrial

1 energy facility or proceed with an expansion to an existing industrial  
2 energy facility. Whenever any person or entity seeks to obtain such a  
3 permit, the person or entity shall file an application with the commission  
4 that provides:

- 5       (1) The name, address and contact information of the applicant;
- 6       (2) a description of the nature, purpose and location of the facility or  
7 expansion thereof;
- 8       (3) a statement of the reasons for the selection of the proposed  
9 location of the facility or expansion thereof;
- 10      (4) the estimated date that construction will commence and the  
11 estimated duration of construction;
- 12      (5) a site plan of the proposed industrial energy facility or expansion  
13 thereof;
- 14      (6) the names and addresses of the landowners of record whose land  
15 or interest therein is proposed to be acquired for the industrial energy  
16 facility or expansion thereof;
- 17      (7) a narrative including how any noise, soil erosion, dust, water  
18 quality, safety issues and fire risks will be addressed by the applicant;
- 19      (8) a description of the proposed decommissioning plan for the  
20 facility, which shall comply with the provisions of section 9, and  
21 amendments thereto; and
- 22      (9) any other information as may be required by the commission.

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

- 27       (1) Comply with all applicable laws and rules and regulations and  
28 orders of the commission;
- 29       (2) comply with the minimum setback distances established pursuant  
30 to section 7, and amendments thereto, or any more restrictive setback  
31 distances imposed pursuant to any local planning and land use laws,  
32 ordinances, regulations or agreements that establish more restrictive  
33 setback distances relating to such facility;
- 34       (3) comply with the code of conduct and agricultural mitigation  
35 protocols established pursuant to section 8, and amendments thereto;
- 36       (4) comply with the decommissioning requirements established  
37 pursuant to section 9, and amendments thereto, or any more restrictive  
38 decommissioning requirements established by the commission;
- 39       (5) not pose a threat of serious injury to the environment or to the  
40 social and economic condition of any person who resides within or near  
41 the proposed location of the facility;
- 42       (6) not substantially impair the health, safety or welfare of  
43 inhabitants; and

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

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

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

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

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

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

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

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

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

41       (h) The commission shall issue a final order upon a permit  
42 application and render a decision with respect to whether the application  
43 and the proposed activities that will be conducted by the applicant will

1 comply with the requirements of this act and any rules and regulations  
2 adopted thereunder compliance with the location of the proposed industrial  
3 energy facility. In addition to legal compliance, the commission may  
4 consider the impacts and benefits to Kansas residents, the affected county  
5 or counties, energy consumers in Kansas, energy consumers in other states  
6 and economic development.

7 (i) The commission shall have authority to:

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

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

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

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

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

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

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

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

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

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

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

39 Sec. 6. (a) Any industrial energy facility owner of an industrial energy  
40 facility that is not required to obtain an initial permit pursuant to section  
41 5(k), and amendments thereto, shall register such facility with the  
42 commission by filing an initial facility registration statement to the  
43 commission. Such initial facility registration statement shall be filed on or

1 before December 31, 2026, and include the following:

2     (1) The name, address and contact information of the registrant;

3     (2) a description of the nature, purpose and location of the facility;

4     (3) the current site layout and detailed footprint of the industrial

5 energy facility;

6     (4) the names and addresses of the landowners of record whose land

7 or interest therein has been acquired for the industrial energy facility;

8     (5) a description of the decommissioning plan that is established for

9 such facility pursuant to section 9, and amendments thereto; and

10     (6) any other information as may be required by the commission.

11     (b) The commission shall require an industrial energy facility owner

12 to file an updated and current facility registration statement not less than

13 once every five years following the issuance of any permit pursuant to

14 section 5, and amendments thereto, or the filing of an initial registration

15 statement pursuant to subsection (a). Such updated and current facility

16 registration statement shall include the following information:

17     (1) The name, address and contact information of the registrant;

18     (2) a description of the nature, purpose and location of the facility;

19     (3) the current site area and detailed footprint of the industrial energy

20 facility;

21     (4) the names and addresses of the landowners of record whose land

22 or interest therein has been acquired for the industrial energy facility;

23     (5) written assurance that the site area and footprint of the industrial

24 energy facility has not been modified from the site area or footprint that

25 was last approved by the commission pursuant to any permit issued for the

26 facility pursuant to section 5, and amendments thereto, or shown on the

27 facility registration statement provided to the commission pursuant to this

28 section;

29     (6) a description of the decommissioning plan that is established for

30 such facility pursuant to section 9, and amendments thereto; and

31     (7) any other information as may be required by the commission.

32     (c) The commission shall establish a facility registration statement fee

33 that is sufficient to compensate the commission for the actual cost to

34 investigate, review and process the facility registration statement. The

35 commission shall remit all moneys received by the commission pursuant

36 to this section to the state treasurer in accordance with the provisions of

37 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

38 remittance, the state treasurer shall deposit the entire amount in the state

39 treasury and credit such amount to the public service regulation fund.

40     (d) Any facility registration statement and documents submitted to

41 the commission in relation thereto shall be a public record and disclosed

42 upon request.

43     Sec. 7. (a) Any new industrial energy facility or expansion of an

1 existing industrial energy facility shall meet or exceed the setback  
2 distances established pursuant to this section.

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

8 (1) 1.1 times the maximum blade tip height of the turbine to the  
9 nearest boundary of a public road right-of-way;

10 (2) 1.1 times the maximum blade tip height of the turbine to the  
11 nearest boundary of a nonparticipating property;

12 (3) 4.0 times the maximum blade tip height to the nearest point on the  
13 outside wall of any habitable dwelling, church, school, adult care home,  
14 medical care facility, child care facility, library, community center, public  
15 building, office building, confined feeding facility or licensed food service  
16 or lodging establishment; and

17 (4) 5280 feet to the nearest boundary of any state park, state lake,  
18 wildlife management area or wildlife refuge as defined in K.S.A. 65-171d,  
19 and amendments thereto.

20 (c) For a new industrial solar energy conversion system or expansion  
21 of an existing industrial solar energy conversion system, no part of the site  
22 area or footprint of any such system shall be located closer than the  
23 following distances, as measured from the nearest outside boundary of  
24 such site area:

25 (1) 50 feet from the nearest public road right-of-way;

26 (2) 50 feet from the nearest boundary of a nonparticipating property;  
27 and

28 (3) 300 feet from the nearest point on the outside wall of any  
29 habitable dwelling, church, school, adult care home, medical care facility,  
30 child care facility, library, community center, public building, office  
31 building, confined feeding facility or licensed food service or lodging  
32 establishment.

33 (d) For a new industrial battery energy storage system or expansion  
34 of an existing industrial battery energy storage system, no such part of the  
35 site area or footprint of such system shall be located closer than the  
36 following distances, as measured from the nearest outside boundary of  
37 such site area:

38 (1) 50 feet from the nearest public road right-of-way;

39 (2) 50 feet from the nearest boundary of a nonparticipating property;  
40 and

41 (3) 300 feet from the nearest point on the outside wall of any  
42 habitable dwelling, church, school, adult care home, medical care facility,  
43 child care facility, library, community center, public building, office

1 building, confined feeding facility or licensed food service or lodging  
2 establishment.

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

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

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

9 (3) an agreement between a landowner and an industrial energy  
10 facility owner; or

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

13 (f) The setback distance requirements established pursuant to this  
14 section shall not apply with respect to any particular structure listed in this  
15 section if the industrial energy facility owner obtains a written agreement  
16 from the owner of any such structure that is within such setback distance  
17 stating that such owner is aware of the construction or expansion, has no  
18 objections to such construction or expansion and authorizing the  
19 construction or expansion within such setback distance. Any such written  
20 agreement shall be filed in the register of deeds office of the county where  
21 the structure that such agreement pertains is located.

22 Sec. 8. (a) The commission shall establish a code of conduct for the  
23 development, construction, modification, operation, maintenance and  
24 decommissioning of industrial energy facilities. The code of conduct shall,  
25 at a minimum, contain provisions that require each industrial energy  
26 facility owner to:

27 (1) Be truthful and honest in all communications with landowners;

28 (2) be transparent about the industrial energy facility project;

29 (3) provide appropriate contact information for the industrial energy  
30 facility owner and any employees, agents, contractors, subcontractors or  
31 assigns thereof that are associated with the project;

32 (4) ensure that all communications with landowners do not contain  
33 any threat or coercion;

34 (5) vacate the property of or cease communications by the request of  
35 any landowner who requests that the industrial energy facility owner, or  
36 any employees, agents, contractors, subcontractors or assigns thereof,  
37 vacate the landowner's property or cease communications with the  
38 landowner;

39 (6) not disclose communications from a landowner unless otherwise  
40 agreed in writing;

41 (7) provide and make accessible project maps to the public during the  
42 permitting process;

43 (8) compensate landowners for any and all damages to land and

1 agricultural operations resulting from the development, construction,  
2 operation or decommissioning of the project and establish procedures to  
3 determine and calculate compensation for such damages;

4 (9) remediate communication circuits that are diminished or disrupted  
5 due to communication interference caused by the project; and

6 (10) indemnify and hold harmless any affected landowner or tenant,  
7 and any heirs, successors, legal representatives or assigns thereof, from  
8 any and all liability associated with the development, construction,  
9 modification, operation, maintenance or decommissioning of the industrial  
10 energy facility, unless such liability arises from the intentional or willful  
11 acts of the indemnitee.

12 (b) The commission, after consultation with the Kansas department of  
13 agriculture, shall establish agricultural impact mitigation protocols that  
14 shall apply with respect to the development, construction, operation,  
15 maintenance and decommissioning of industrial energy facilities. The  
16 agricultural impact mitigation protocols shall contain, at a minimum,  
17 provisions that require each industrial energy facility owner to:

18 (1) Provide advance notice to and coordinate with any landowner or  
19 tenant whenever the industrial energy facility owner needs to access  
20 private property;

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

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

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

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

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

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

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

43 (9) for any project involving the construction of overhead

1 transmission or generation tie lines, construct such lines with an adequate  
2 line height to ensure that any existing agricultural operations may continue  
3 under and around such line in a safe manner;

4 (10) establish procedures for tree and brush removal, including, but  
5 not limited to, compensation for removal of trees with commercial value;  
6 and

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

9 Sec. 9. (a) Each industrial energy facility owner in this state,  
10 including any industrial energy facility owner that obtains a permit  
11 pursuant to section 5, and amendments thereto, or registers with the  
12 commission pursuant to section 6, and amendments thereto, shall be  
13 responsible for the full and complete decommissioning or partial  
14 decommissioning of an industrial energy facility in accordance with this  
15 section.

16 (b) (1) An industrial energy facility owner shall, upon the cessation of  
17 operations of the industrial energy facility, provide for the full and  
18 complete decommissioning of the industrial energy facility. The industrial  
19 energy facility owner shall complete the full and complete  
20 decommissioning of any such facility not later than one year following the  
21 date of such cessation of operations.

22 (2) An industrial energy facility owner shall, upon the cessation of  
23 operations of any individual generating unit or energy storage unit of an  
24 industrial energy facility, provide for the partial decommissioning of the  
25 industrial energy facility. The industrial energy facility owner shall  
26 complete the partial decommissioning not later than one year following the  
27 date of such cessation of operations.

28 (c) The commission shall require each such industrial energy facility  
29 owner to establish and maintain a sufficient, efficient and enforceable  
30 decommissioning plan for the facility to ensure the full and complete or  
31 partial decommissioning of the facility upon the cessation of operations or  
32 the facility or any part thereof. Any such decommissioning plan and  
33 updates thereto shall be prepared, signed and sealed by a professional  
34 engineer who is licensed to practice in Kansas. Each industrial energy  
35 facility owner shall provide to the commission a decommissioning plan  
36 that contains the following information:

37 (1) The name, address and contact information for the industrial  
38 energy facility owner and the name, address and contact information of  
39 each landowner that owns property where the industrial energy facility is  
40 located;

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

43 (3) a description of whether the decommissioned materials will be

1        disposed of, reused or recycled;

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

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

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

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

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

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

16          (d) The commission shall require and order an industrial energy  
17        facility owner to establish and maintain financial assurance in a form and  
18        amount that is sufficient to implement the decommissioning plan for the  
19        industrial energy facility. The industrial energy facility owner shall provide  
20        the financial assurance in an amount determined as necessary by the  
21        commission in the form of an irrevocable standby letter of credit,  
22        performance bond, surety bond or unconditional payment guarantee  
23        executed by the parent company of the facility owner. The financial  
24        assurance shall at all times be accessible by the commission to provide for  
25        the decommissioning of the industrial energy facility should the owner not  
26        be financially able to complete the decommissioning.

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

29            (1) An updated estimate of the cost to decommission the facility; and

30            (2) documentation that the financial assurance maintained by the  
31        industrial energy facility owner is sufficient to cover such cost.

32          (f) Nothing in this section shall prohibit the establishment, operation  
33        or enforcement of more restrictive decommissioning requirements  
34        pursuant to:

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

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

39            (3) an agreement between a landowner and an industrial energy  
40        facility owner; or

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

43          Sec. 10. (a) If the commission finds that any industrial energy facility

1 owner has violated the provisions of this act, any rules and regulations  
2 adopted by the commission or any permit or order of the commission, in  
3 addition to any other penalties imposed by law, the commission may:

4     (1) Issue a cease and desist order; or  
5     (2) impose a civil penalty not to exceed \$10,000 per violation. Such  
6     penalty shall constitute an actual and substantial economic deterrent to the  
7     violation for which the penalty is assessed. In the case of a continuing  
8     violation, the commission may deem every day that such violation  
9     continues as a separate violation.

10     (b) No cease and desist order or civil penalty shall be imposed  
11     pursuant to this section except upon the written order of the commission to  
12     the industrial energy facility owner who committed the violation. The  
13     order shall state the violation, the penalty imposed and the right to appeal  
14     such order to the commission. Any such facility owner, within 30 days  
15     after service of such order, may make written request to the commission  
16     for a hearing. The commission shall conduct a hearing in accordance with  
17     the provisions of the Kansas administrative procedure act within 30 days  
18     following the receipt of such request.

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

26     (d) All moneys received by the commission from penalties imposed  
27     and costs and attorney fees assessed pursuant to this section shall be  
28     remitted to the state treasurer in accordance with the provisions of K.S.A.  
29     75-4215, and amendments thereto. Upon receipt of each such remittance,  
30     the state treasurer shall deposit the entire amount in the state treasury to  
31     the credit of the public service regulation fund.

32     Sec. 11. (a) Any order of the commission established pursuant to this  
33     act is subject to review in accordance with the Kansas judicial review act.

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

38     Sec. 12. The commission may adopt rules and regulations to  
39     administer and enforce the provisions of this act.

40     Sec. 13. This act shall take effect and be in force from and after its  
41     publication in the statute book.