

HOUSE BILL No. 2633

By Committee on Energy and Utilities

1-17

9 AN ACT concerning counties; relating to approval of wind power gen-
10 eration facilities; amending K.S.A. 19-101a and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. As used in sections 1 through 4, and amendments
15 thereto:

16 (a) "Affected landowner" means any person, firm, partnership, cor-
17 poration or association owning an interest in the surface of any parcel of
18 land, or portion thereof, on the date the notice required by subsection
19 (b) of section 2, and amendments thereto, is sent, which is located within
20 2,000 feet of the physical boundary of the land the developer has leased
21 or intends to lease for the project.

22 (b) "Board" means the board of county commissioners of the county
23 to which the application is submitted.

24 (c) "Developer" means any person, firm, partnership, corporation,
25 association, cooperative corporation or other entity desiring to construct
26 all or any portion of a wind power generation facility.

27 (d) "Supermajority" means the affirmative vote of 75% or more of
28 the county commissioners authorized to vote on such matter.

29 (e) "Wind power generation facility" means a wind driven machine
30 of a height of at least 150 feet as measured to the tip of the blade at its
31 highest point that converts wind energy into electrical power for the pri-
32 mary purpose of sale, resale or off-site use.

33 New Sec. 2. (a) Prior to the siting of any wind power generation
34 facility, or expansion thereof, a developer shall submit an application for
35 approval of such siting to the board of county commissioners of any county
36 in which the siting is to be located. The application shall be submitted on
37 such forms and in the manner as specified by the board. The application
38 shall include the following: (1) The name, address and phone number of
39 the developer and the developer's contact person for the project; (2)
40 detailed plans of the development, including all proposed siting locations
41 and the types of wind power generation facilities to be constructed; and
42 (3) the names and addresses of all affected landowners.

43 (b) The developer shall provide written notice of its intent to develop

1 a wind power generation facility, or expansion thereof, to all affected
2 landowners and such notice shall be sent to such landowners prior to the
3 submission of the application required by subsection (a).

4 New Sec. 3. (a) Upon receipt of an application described in section
5 2, and amendments thereto, the board of county commissioners shall
6 conduct a public hearing on such application at a convenient time and
7 location. The board shall give notice of the hearing by publication in a
8 newspaper of general circulation in the county once each week for two
9 consecutive weeks. Such notice shall state the time, location and purpose
10 of such hearing. The hearing shall be held no more than 30 days after
11 the receipt of the application. At the hearing, the board shall receive
12 testimony from the developer and any other interested persons. The hear-
13 ing may be continued by resolution of the board.

14 (b) Prior to the hearing, the board shall require the developer to
15 produce the following relevant information, which may be submitted
16 prior to or at the hearing: (1) A report detailing the developer's compli-
17 ance or noncompliance with the siting guidelines for wind power projects
18 in Kansas as set forth in section 4, and amendments thereto; and (2) a
19 power purchase agreement for the purchase of the energy to be generated
20 by the wind power generation facility or a letter of intent to enter into
21 such agreement executed by the developer and an energy purchaser.

22 (c) Upon conclusion of the hearing the board shall by majority vote
23 approve or disapprove the proposed siting plans set forth in the applica-
24 tion. As a guide in determining the advisability of approving the applica-
25 tion, the board's considerations may include, but not be limited to, any
26 testimony offered at the public hearing and the siting guidelines for wind
27 power projects in Kansas as set forth in section 4, and amendments
28 thereto. If approved the board is hereby authorized to adopt a certificate
29 of public benefit certifying such approval. The board may make its ap-
30 proval conditional on the developer meeting one or more of the following
31 conditions and if such conditions are not met in the time specified by the
32 board, then the board is authorized to withdraw its approval of the ap-
33 plication: (1) Bonding, cash escrows or other acceptable assurances suf-
34 ficient to provide decommissioning of the wind power generation facility
35 and reclamation of the site, including, but not limited to, turbines, access
36 roads, powerlines and associated equipment and infrastructure; (2) bond-
37 ing, cash escrows or other acceptable assurances sufficient to mitigate
38 damage to roads and bridges or increased demand on public accommo-
39 dations or administrative burdens attributable to the construction and
40 maintenance of a wind power generation facility; or (3) minimum setbacks
41 from occupied buildings, public roads or other areas from time to time
42 inhabited by the public to avoid undue risk from turbine blade failure or
43 ice throw. The board shall render its decision within 30 days after con-

1 conclusion of the hearing, and such decision shall be published in a news-
2 paper of general circulation in the county once each week for three con-
3 secutive weeks.

4 (d) In the event a protest petition signed by not less than 70% of
5 landowners surrounding the proposed wind development site is filed with
6 the county clerk within 30 days following the date of the last publication
7 of the board's decision, the board shall reconsider the application of the
8 developer. The board shall render its decision on reconsideration of the
9 application within 30 days following the date of the filing of the petition.
10 Such reconsideration shall only address the public safety of the proposed
11 project during such project's construction, operation and decommission-
12 ing, and the economic benefits to the county are greater than any rea-
13 sonably anticipated liability.

14 New Sec. 4. The following are siting guidelines for wind power pro-
15 jects in Kansas:

16 (a) Land use guidelines:

17 (1) Agencies and affected landowners have been contacted early in
18 the process to identify potentially sensitive land uses and issues;

19 (2) the developer has reviewed and addressed land use compatibility
20 issues;

21 (3) in the spirit of interacting with all affected landowners in an eq-
22 uitable and fair fashion when proposing lease and option agreements, the
23 developer has provided access or direction to objective background in-
24 formation what will allow the affected landowner to make a fully informed
25 decision;

26 (4) because of the rarity and high conservation value of the prairie,
27 care should be given to avoid damage to unfragmented high quality rem-
28 nants in the Tall Grass, Sandsage, Mixed Grass and Shortgrass prairies in
29 central and western Kansas. When feasible, wind energy development
30 should be located on already altered landscapes, such as extensively cul-
31 tivated land or areas already developed or both. An undeveloped buffer
32 adjacent to intact prairies is also desirable;

33 (5) the developer has planned for efficient use of the land, consoli-
34 dated necessary infrastructure requirements whenever possible and care-
35 fully evaluated current transmission and market access; and

36 (6) the developer of such wind power project shall submit with the
37 application for siting projections of the economic value to the community
38 of such proposed project and scientific-based data on the economic and
39 macroeconomic benefits to the state and the nation.

40 (b) Noise management guidelines:

41 (1) Where acoustic levels are critical because of nearby residences or
42 natural surroundings, the developer has investigated the possibility of
43 using sound reduction technology on appropriate turbines and submits

1 scientific-based estimates of noise levels at the development's perimeter
2 to the public, landowners and public officials.

3 (c) Natural and biological resources guidelines: (1) The developer
4 has considered the biological setting early in the project evaluation and
5 planning process, and has used biological and environmental experts to
6 conduct preliminary reconnaissance of the prospective site area. The de-
7 veloper has also communicated with wildlife agency and university
8 personnel;

9 (2) the developer has contacted appropriate resource management
10 agencies early in the planning process to determine if there are any re-
11 sources of special concern in the area under consideration;

12 (3) the developer has involved local environmental groups or natural
13 resources groups, or both;

14 (4) the developer and state and local resource management agencies
15 or groups, or both, have conducted landscape-level examinations of key
16 wildlife habitats, migration corridors, staging/concentration areas, and
17 breeding and brood-rearing areas to develop general siting strategies;

18 (5) the developer should bury power lines when feasible. In regions
19 where grassland burning is practiced, infrastructure should be able to
20 withstand periodic burning of vegetation. Roads and fences should be
21 minimized;

22 (6) the developer should not allow perches on the nacelles of tur-
23 bines. Towers shall not utilize lattice-type construction or other designs
24 that provide perches for avian predators. The developer has addressed
25 potential adverse affects of turbine warning lights on migrating birds;

26 (7) the developer shall situate turbines in a way that does not interfere
27 with important wildlife movement corridors and staging areas; and

28 (8) when it is impossible to avoid significant ecological damage in the
29 siting of a wind power generation facility, the developer has planned for
30 mitigation for habitat loss. Appropriate actions may include ecological
31 restoration, long-term management agreements, and conservation ease-
32 ments to enhance or protect sites with similar or higher ecological quality
33 to that of the developed site.

34 (d) Visual impact guidelines:

35 (1) The visual impact of wind power projects is an important consid-
36 eration in siting deliberations. The developer has evaluated fully the im-
37 pact on the quality of the surrounding landscape and viewsheds, especially
38 in areas with high aesthetic qualities and where affected landowners'
39 property may be impacted by the siting. Accurate visual representations
40 of potential projects (including visual simulations and viewshed analyses)
41 shall be made available to affected landowners, the general public and
42 agencies regarding the visual impact of wind power projects;

43 (2) the developer has listened to the communities and affected land-

- 1 owners in all project phases;
- 2 (3) the developer has considered adapting the project design to min-
3 imize visual exposure from visually sensitive areas;
- 4 (4) the developer has planned the project to minimize the need for
5 developed roads or cut-and-fill;
- 6 (5) the developer has considered the possibilities and benefits of us-
7 ing roadless project designs or designs that rely on existing roads; and
- 8 (6) the developer has identified designated scenic byways and pop-
9 ular vistas, and avoided sites that are readily visible from those points.
- 10 (e) Soil erosion and water quality:
- 11 (1) Wherever possible, the developer has avoided sites that require
12 construction activities on steep slopes;
- 13 (2) in considering the appropriate erosion control measures required
14 for a specific site, the developer has incorporated a well-developed ero-
15 sion and sediment control plan;
- 16 (3) the developer recognizes that construction roads and construction
17 staging areas should be kept to a minimum, and care should be given to
18 avoid sensitive habitats;
- 19 (4) the developer recognizes that ongoing operation and maintenance
20 activities should be carried out as practical by use of light conveyances to
21 minimize habitat disturbance and the need for improved roads; and
- 22 (5) the developer recognizes that native vegetation should be used
23 when reseeding disturbed areas, and that wildlife and plant composition
24 should be considered in determining the frequency and timing of mowing
25 near turbines.
- 26 (f) Safety guidelines: The developer has included the need for safety
27 setbacks, and incorporated sufficient spacing from public access ways, and
28 particularly from residential areas and structures.
- 29 (g) Cultural, archaeological and paleontological guidelines:
- 30 (1) The developer has avoided selecting sites with potentially sensi-
31 tive cultural or historical resources whenever possible;
- 32 (2) the developer has consulted with the Kansas state historical so-
33 ciety and qualified professional specialists familiar with cultural and fossil
34 resources in the project development area;
- 35 (3) the developer recognized that some sensitive resources and sites
36 may be confidential to Native Americans, and has respected this confi-
37 dentiality and plans to work closely with tribal representatives to avoid
38 disruption of these resources;
- 39 (4) the developer has designed project site layouts to avoid sensitive
40 resources if possible; and
- 41 (5) the developer has provided for monitoring and mitigation for pro-
42 tection of sensitive resources during construction and operation of the
43 project.

1 (h) Socioeconomic, public service and infrastructure guidelines:

2 (1) The developer has consulted with the local agencies and service
3 districts to determine if and how the project's requirements may affect
4 community services, costs and infrastructure;

5 (2) the developer has planned the project's operation and construc-
6 tion to avoid or minimize potential impacts on community services and
7 infrastructure;

8 (3) the developer recognizes that the Kansas personal property tax
9 exemption available to renewable energy projects affects the local com-
10 munity. Developers shall incorporate community and goodwill initiatives,
11 including indicia of tax payments to local governments and civic groups,
12 into the project's economic plan and work to be good neighbors;

13 (4) the developer has provided information related to possible future
14 project expansions. Affected landowners should recognize that developers
15 may not have precise information about future expansions, and the de-
16 veloper recognizes that affected landowner issues and concerns may be
17 dependent on project scale, and that expanded projects may involve im-
18 pacts not specifically addressed during the initial project;

19 (5) the developer has anticipated and made provisions for future site
20 decommissioning and restoration;

21 (6) the developer will utilize local contractors and providers for serv-
22 ices, supplies, and equipment as much as possible during construction
23 and operation of the project; and

24 (7) the developer recognizes that the local community may not have
25 a specific need for the electricity generated by the proposed project, and
26 that there should be substantive public benefits beyond the greater good
27 of hosting a renewable energy facility.

28 (i) Public interaction guidelines:

29 (1) The developer has prepared and will implement a public outreach
30 program on the benefits and trade-offs involved in wind generation; and

31 (2) the developer has provided access or direction to objective back-
32 ground resources that will allow the interested parties to make fully in-
33 formed decisions. Decision making by developers, affected landowners,
34 elected officials and the general public will be enhanced when accurate
35 and comprehensive information is shared and ample opportunity for two-
36 way communication is available. Public involvement through meetings
37 and public forums should be incorporated into the siting process.

38 New Sec. 5. Sections 1 through 4, and amendments thereto, shall
39 only apply to counties which have not adopted zoning and planning reg-
40 ulations pursuant to article 7 of chapter 12 of the Kansas Statutes An-
41 notated or article 29 of chapter 19 of the Kansas Statutes Annotated, and
42 amendments thereto.

43 Sec. 6. K.S.A. 19-101a is hereby amended to read as follows: 19-

- 1 101a. (a) The board of county commissioners may transact all county
2 business and perform all powers of local legislation and administration it
3 deems appropriate, subject only to the following limitations, restrictions
4 or prohibitions:
- 5 (1) Counties shall be subject to all acts of the legislature which apply
6 uniformly to all counties.
- 7 (2) Counties may not affect the courts located therein.
- 8 (3) Counties shall be subject to acts of the legislature prescribing
9 limits of indebtedness.
- 10 (4) In the exercise of powers of local legislation and administration
11 authorized under provisions of this section, the home rule power con-
12 ferred on cities to determine their local affairs and government shall not
13 be superseded or impaired without the consent of the governing body of
14 each city within a county which may be affected.
- 15 (5) Counties may not legislate on social welfare administered under
16 state law enacted pursuant to or in conformity with public law No. 271—
17 74th congress, or amendments thereof.
- 18 (6) Counties shall be subject to all acts of the legislature concerning
19 elections, election commissioners and officers and their duties as such
20 officers and the election of county officers.
- 21 (7) Counties shall be subject to the limitations and prohibitions im-
22 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
23 prescribing limitations upon the levy of retailers' sales taxes by counties.
- 24 (8) Counties may not exempt from or effect changes in statutes made
25 nonuniform in application solely by reason of authorizing exceptions for
26 counties having adopted a charter for county government.
- 27 (9) No county may levy ad valorem taxes under the authority of this
28 section upon real property located within any redevelopment project area
29 established under the authority of K.S.A. 12-1772, and amendments
30 thereto, unless the resolution authorizing the same specifically authorized
31 a portion of the proceeds of such levy to be used to pay the principal of
32 and interest upon bonds issued by a city under the authority of K.S.A.
33 12-1774, and amendments thereto.
- 34 (10) Counties shall have no power under this section to exempt from
35 any statute authorizing or requiring the levy of taxes and providing sub-
36 stitute and additional provisions on the same subject, unless the resolution
37 authorizing the same specifically provides for a portion of the proceeds
38 of such levy to be used to pay a portion of the principal and interest on
39 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
40 ments thereto.
- 41 (11) Counties may not exempt from or effect changes in the provi-
42 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.
- 43 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101

1 through 12-1,109, and amendments thereto, counties may not levy and
2 collect taxes on incomes from whatever source derived.

3 (13) Counties may not exempt from or effect changes in K.S.A. 19-
4 430, and amendments thereto.

5 (14) Counties may not exempt from or effect changes in K.S.A. 19-
6 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

7 (15) Counties may not exempt from or effect changes in K.S.A. 19-
8 15,139, 19-15,140 and 19-15,141, and amendments thereto.

9 (16) Counties may not exempt from or effect changes in the provi-
10 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
11 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
12 through 12-1270 and 12-1276, and amendments thereto.

13 (17) Counties may not exempt from or effect changes in the provi-
14 sions of K.S.A. 19-211, and amendments thereto.

15 (18) Counties may not exempt from or effect changes in the provi-
16 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

17 (19) Counties may not regulate the production or drilling of any oil
18 or gas well in any manner which would result in the duplication of reg-
19 ulation by the state corporation commission and the Kansas department
20 of health and environment pursuant to chapter 55 and chapter 65 of the
21 Kansas Statutes Annotated, and amendments thereto, and any rules and
22 regulations adopted pursuant thereto. Counties may not require any li-
23 cense or permit for the drilling or production of oil and gas wells. Counties
24 may not impose any fee or charge for the drilling or production of any
25 oil or gas well.

26 (20) Counties may not exempt from or effect changes in K.S.A. 79-
27 41a04, and amendments thereto.

28 (21) Counties may not exempt from or effect changes in K.S.A. 79-
29 1611, and amendments thereto.

30 (22) Counties may not exempt from or effect changes in K.S.A. 79-
31 1494, and amendments thereto.

32 (23) Counties may not exempt from or effect changes in subsection
33 (b) of K.S.A. 19-202, and amendments thereto.

34 (24) Counties may not exempt from or effect changes in subsection
35 (b) of K.S.A. 19-204, and amendments thereto.

36 (25) Counties may not levy or impose an excise, severance or any
37 other tax in the nature of an excise tax upon the physical severance and
38 production of any mineral or other material from the earth or water.

39 (26) Counties may not exempt from or effect changes in K.S.A. 79-
40 2017 or 79-2101, and amendments thereto.

41 (27) Counties may not exempt from or effect changes in K.S.A. 2-
42 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
43 1,178 through 65-1,199, and amendments thereto.

- 1 (28) Counties may not exempt from or effect changes in K.S.A. 2007
2 Supp. 80-121, and amendments thereto.
- 3 (29) Counties may not exempt from or effect changes in K.S.A. 19-
4 228, and amendments thereto.
- 5 (30) Counties may not exempt from or effect changes in the wireless
6 enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of
7 K.S.A. 12-5301 through 12-5308, and amendments thereto.
- 8 (31) Counties may not exempt from or effect changes in K.S.A. 2007
9 Supp. 26-601, and amendments thereto.
- 10 (32) (A) Counties may not exempt from or effect changes in the Kan-
11 sas liquor control act except as provided by paragraph (B).
- 12 (B) Counties may adopt resolutions which are not in conflict with the
13 Kansas liquor control act.
- 14 (33) (A) Counties may not exempt from or effect changes in the Kan-
15 sas cereal malt beverage act except as provided by paragraph (B).
- 16 (B) Counties may adopt resolutions which are not in conflict with the
17 Kansas cereal malt beverage act.
- 18 (34) Counties may not exempt from or effect changes in the Kansas
19 lottery act.
- 20 (35) Counties may not exempt from or effect changes in the Kansas
21 expanded lottery act.
- 22 (36) *Counties may neither exempt from nor effect changes to the em-*
23 *inent domain procedure act.*
- 24 (37) *Counties may not exempt from or effect changes in the provisions*
25 *of sections 1 through 5, and amendments thereto.*
- 26 (b) Counties shall apply the powers of local legislation granted in
27 subsection (a) by resolution of the board of county commissioners. If no
28 statutory authority exists for such local legislation other than that set forth
29 in subsection (a) and the local legislation proposed under the authority
30 of such subsection is not contrary to any act of the legislature, such local
31 legislation shall become effective upon passage of a resolution of the
32 board and publication in the official county newspaper. If the legislation
33 proposed by the board under authority of subsection (a) is contrary to an
34 act of the legislature which is applicable to the particular county but not
35 uniformly applicable to all counties, such legislation shall become effec-
36 tive by passage of a charter resolution in the manner provided in K.S.A.
37 19-101b, and amendments thereto.
- 38 (c) Any resolution adopted by a county which conflicts with the re-
39 strictions in subsection (a) is null and void.
- 40 Sec. 7. K.S.A. 19-101a is hereby repealed.
- 41 Sec. 8. This act shall take effect and be in force from and after its
42 publication in the statute book.