

SENATE BILL No. 233

By Committee on Federal and State Affairs

2-6

1 AN ACT concerning energy; relating to commercial wind and solar energy
2 facilities; establishing requirements for the decommissioning of such
3 facilities; requiring a county to enter into a decommissioning agreement
4 with a facility owner prior to construction of any such facility;
5 requiring the facility owner to provide financial assurance in an amount
6 sufficient to cover the costs of decommissioning; requiring
7 decommissioning costs to be paid by affected landowners under certain
8 circumstances.
9

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

11 Section 1. (a) (1) Prior to the construction of any commercial solar
12 energy facility or commercial wind energy facility in this state, the board
13 of county commissioners of the county where such proposed facility will
14 be located shall require the facility owner to enter into a decommissioning
15 agreement with the county. The decommissioning agreement shall
16 establish a sufficient, efficient and enforceable decommissioning plan for
17 the facility. The decommissioning plan shall require a facility owner to
18 decommission all generating units and applicable supporting facilities and
19 materially return and restore any land disturbed or changed as a result of
20 the construction, operation and decommissioning of the facility to the
21 condition that such land existed prior to such construction, operation and
22 decommissioning.

23 (2) The decommissioning plan shall be prepared by an independent,
24 third-party engineer licensed under the laws of this state. Such plan shall
25 include an estimate and description of the amount of financial assurance
26 that shall be sufficient for the facility owner to implement the
27 decommissioning plan. Such financial assurance cost estimate shall be
28 updated by such an engineer at least once every five years to account for
29 any inflation adjustments or other factors. The facility owner shall
30 reimburse the county for any costs borne by the county to contract with an
31 engineer pursuant to this section.

32 (3) The facility owner shall provide the financial assurance
33 determined pursuant to paragraph (2) in the form of an irrevocable standby
34 letter of credit, performance bond, surety bond or unconditional payment
35 guarantee executed by a parent company of the facility owner only if such
36 parent company maintains an investment grade credit rating. The county

1 shall have the sole authority to determine the form of financial assurance
2 required pursuant to a decommissioning plan and may, from time to time
3 and as conditions may require, revise the form of financial assurance
4 required. Such financial assurance shall at all times be accessible by such
5 county so that the county may initiate decommissioning of the facility in
6 accordance with the terms and conditions of the decommissioning
7 agreement.

8 (b) Upon any change of ownership of a commercial solar energy
9 facility or commercial wind energy facility, a decommissioning agreement
10 entered into pursuant to this section shall be transferred to and all such
11 rights and obligations assumed by the subsequent facility owner.

12 (c) If a facility owner indicates an inability to complete
13 decommissioning, or is no longer in business, and the county is unable to
14 access the financial assurance to complete decommissioning in accordance
15 with a decommissioning plan entered into pursuant to this section, the
16 county shall decommission such facility in accordance with the
17 decommissioning plan and shall assess against any landowner who is
18 subject to a lease or easement relating to such facility the costs borne by
19 the county to decommission any such facility on such landowner's land.
20 Prior to the county bearing the costs to decommissioning any such facility
21 and assessing such costs against landowners as provided in this subsection,
22 the county may authorize any landowner to decommission any such
23 facility and may establish reasonable time limitations for the landowner's
24 completion of such decommissioning.

25 (d) Any decommissioning agreement entered into pursuant to this
26 section shall include meaningful remedy and penalty provisions for a
27 facility owner's noncompliance with such agreement, including a
28 requirement that when the county commences a civil action against a
29 facility owner with respect to the enforcement or interpretation of a
30 decommissioning agreement, the county shall be entitled to an award of
31 the county's costs of such litigation, including reasonable attorney fees,
32 from the facility owner. The county shall have authority to enforce a
33 decommissioning agreement by mandamus or other appropriate
34 proceeding at law or equity.

35 (e) As used in this section:

36 (1) "Commercial solar energy facility" means any device or assembly
37 of devices and supporting facilities that has a nameplate capacity of a least
38 one megawatt and uses solar energy to generate electricity for the primary
39 purpose of wholesale or retail sale.

40 (2) "Commercial wind energy facility" means any device or assembly
41 of devices and supporting facilities that has a nameplate capacity of at
42 least one megawatt and uses kinetic energy from the wind to generate
43 electricity for the primary purpose of wholesale or retail sale.

1 (3) "Facility owner" means any person who has a direct ownership
2 interest in or who is acting as the developer or operator of a commercial
3 solar energy facility or commercial wind energy facility.

4 Sec. 2. This act shall take effect and be in force from and after its
5 publication in the statute book.