

Approved: March 19, 2010  
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 a.m. on February 15, 2010, in Room 785 of the Docking State Office Building.

All members were present except:  
Representative Dan Johnson- excused

Committee staff present:  
Matt Sterling, Office of the Revisor of Statutes  
Mary Torrence, Office of the Revisor of Statutes  
Cindy Lash, Kansas Legislative Research Department  
Iraida Orr, Kansas Legislative Research Department  
Artur Bagyants, Kansas Legislative Research Department  
Renaë Hansen, Committee Assistant

Others attending:  
Forty-Five including the attached list.

Action on:

**HB 2652 - Kelsey Smith act; call location; amendments.**

Representative Annie Kuether moved to amend HB 2652 (Attachment 1). Seconded by Representative Milack Talia.

Questions were asked and comments made by Representatives: Vern Swanson, Annie Kuether, and Tom Sloan.

Motion to amend passed.

Representative Cindy Neighbor moved to pass HB 2652 as amended for passage. Representative Rob Olson seconded the motion. Motion passed.

Representative Rob Olson will carry the bill.

Representative Rob Olson gave an explanation of an amendment he might offer on the floor for texting. Chairman Holmes noted that the industry would need to be contacted to see if the texting piece was even possible with current available technology.

Action on:

**HB 2624 - Concerning construction of new school buildings.**

Representative Milack Talia moved to substitute HB 2624 (Attachment 2) with presented changes. Seconded by Representative Tom Moxley.

Questions were asked and comments made by Representatives: Milack Talia, Mike Slattery, Vern Swanson, Cindy Neighbor, Tom Moxley, Annie Kuether, and Tom Sloan.

Motion to amend fails 7-10.

2/15

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on February 15, 2010, in Room 785 of the Docking State Office Building.

The committee collectively decided to hold on to this bill and work on some changes that might be used.

No action on HB 2624 was taken.

Action on:

**HB 2663 - Concerning cities and counties and the creation of energy management districts.**

Representative Milack Talia moved to amend HB 2663, (Attachment 3) with the proposed changes. Seconded by Representative Mike Slattery.

Questions were asked and comments made by Representatives: Milack Talia, Cindy Neighbor, Don Myers, Rob Olson, Richard Proehl, and Tom Sloan.

Representative Milack Talia noted that he wanted "Governmental" struck from the proposed amendment and it was agreed to by the second, Representative Mike Slattery.

Motion to amend as proposed and changed passed.

Representative Tom Sloan moved to delete the language "with the plurality of owners of real property determining it advisable" on Page 2 of the amendment, in HB 2663. Seconded by Representative Mike Slattery. Motion passed.

Representative Milack Talia moved to pass HB 2663 as amended favorable for passage. Seconded by Representative Annie Kuether.

Questions were asked and comments made by Representatives: Forrest Knox, Annie Kuether, Don Myers, Mike Burgess, Rob Olson, Tom Moxley, Tom Sloan and Milack Talia.

Motion to pass out favorably passed 10-8.

Representative Milack Talia will carry the bill on the house floor.

Action on:

**HB 2662 - Concerning the wind generation permit act.**

Representative Tom Moxley moved to amend HB 2662, (Attachment 4) with the proposed language presented. Seconded by Representative Annie Kuether.

Questions were asked and comments made by Representatives: Tom Moxley, Vern Swanson, Annie Kuether, Tom Sloan, Carl Holmes, and Vince Wetta.

Matt Sterling, Kansas Revisor of Statutes, passed out a proposed amendment by Representative Tom Sloan, (Attachment 5). Representative Sloan gave a brief explanation of his proposed amendment.

Questions were asked and comments made by Representatives: Tom Sloan, Forrest Knox, and Cindy Neighbor.

Representative Cindy Neighbor moved to table the bill. The motion was seconded by Representative Margaret

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on February 15, 2010, in Room 785 of the Docking State Office Building.

Long.

The chairman chose per committee rules, to not take up the motion to table **HB 2662**.

Action on **HB 2662** was suspended and will continue on Wednesday February 17, 2010.

The next meeting is scheduled for February 17, 2010.

The meeting was adjourned at 10:49 a.m.

# HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 15, 2010

NAME	REPRESENTING
Chris Gygstad	Federico Consulting
Jim Brantner	BT&T
Joe Dick	KLBPU
Steve Adams	KDWP
Maui Hartnett	CEP
Loz Brosius	KCC
Ryan Freed	KCC
Dina Fisk	VERIZON WIRELESS
Tom DAY	KCC
Mark Schweber	Weston
Dave Hoffhaus	KEC
Randen Ann	Kr. Assn. of Counties
Matthew Goddard	Heartland Community Bankers Assoc.
Nelson Krueger	Sare West
Michelle Peterson	Capitol Strategics
Whitney Jamon	Iberdrola
Doug Smith	KLPG
Corey Moha	KDOC
Shady Allen	KRFTC



# HOUSE BILL No. 2652

By Committee on Federal and State Affairs

2-4

9 AN ACT concerning the Kelsey Smith act; amending K.S.A. 2009 Supp.  
10 22-4615 and repealing the existing section.

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

12 Section 1. ~~K.S.A. 2009 Supp. 22-4615~~ is hereby amended to read as  
13 follows: 22-4615. (a) Upon request of a law enforcement agency, a wire-  
14 less telecommunications carrier shall provide call location information  
15 concerning the telecommunications device of the user to the requesting  
16 law enforcement agency in order to respond to a call for emergency serv-  
17 ices or in an emergency situation that involves the risk of death or serious  
18 physical harm.

19 (b) Notwithstanding any other provision of law to the contrary, noth-  
20 ing in this section prohibits a wireless telecommunications carrier from  
21 establishing protocols by which the carrier could voluntarily disclose call  
22 location information.

23 (c) No cause of action shall lie in any court against any wireless tel-  
24 ecommunications carrier, its officers, employees, agents or other specified  
25 persons for providing call location information while acting in good faith  
26 and in accordance with the provisions of this section.

27 (d) (1) ~~The Kansas bureau of investigation shall obtain contact infor-~~  
28 ~~mation for~~ All wireless telecommunications carriers ~~authorized registered~~  
29 ~~to do business in the state of Kansas or submitting to the jurisdiction~~  
30 ~~thereof shall submit their emergency contact information to the Kansas~~  
31 ~~bureau of investigation~~ in order to facilitate ~~a request requests~~ from a law  
32 enforcement agency for call location information in accordance with this  
33 section. *This contact information must be submitted annually by April*  
34 *15th or immediately upon any change in contact information.*

35 (2) ~~The Kansas bureau of investigation shall disseminate the infor-~~  
36 ~~mation obtained pursuant to subsection (d)(1) on a quarterly basis or~~  
37 ~~immediately as changes occur; maintain a database containing emergency~~  
38 ~~contact information for all wireless telecommunications carriers registered~~  
39 ~~to do business in the state of Kansas and shall make the information im-~~  
40 ~~mediately available upon request~~ to all public safety answer points in the  
41 state.

42 (e) Rules and regulations shall be promulgated by the director of the  
43

(a) For the purposes of this section, "wireless telecommunications carrier" shall include a reseller of wireless service.

And relettering accordingly

HOUSE ENERGY AND UTILITIES  
DATE: 2/15/2010  
ATTACHMENT 1

Section 1. (a) When a board of education issues a request for proposal or a request for quotation for the construction of any new school building, all bidders responding to the request shall provide construction cost estimates for the school building along with alternates.

(b) The board shall retain the option to select any, or none, of the alternates.

(c) The provisions of this section shall not apply to the construction of any new school building if the bidding for the construction has closed and the contract has been awarded prior to the effective date of this act.

(d) As used in this section: (1) "Alternate" means a separate bid, apart from the cost estimates concerning the construction of the new school building, itemizing all the energy efficiency measures that fit the school's size, function and location.

(2) "Board of education" means the board of education of any school district.

(3) "Energy efficiency measures" mean the use of features or equipment designed to provide energy, utility and operational cost savings and may include, but are not limited to, the following:

(A) Insulation in walls, roofs, floors and foundations and in heating and cooling distribution systems;

(B) building envelope items, such as roofing, masonry, foundation, windows and doors;

(C) automated or computerized energy control systems;

(D) geothermal heating or cooling pumps, heating, ventilating or air conditioning and distribution system modifications or replacements;

(E) caulking and weather-stripping;

(F) lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(G) energy recovery systems;

(H) daylighting systems;

(I) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity;

(J) tankless hot water systems, solar hot water systems and low-flow bathroom fixtures and toilets; and

(K) any other modification, installation or remodeling approved as an energy, utility or operational cost savings measure by the board of education.

(4) "School building" means any building or structure operated or used for any purpose by, or located upon the land of, any school district. "School building" does not mean any building or structure operated or used for any purpose by, or located upon the land of, a private school or any owner-occupied, single-family dwelling in which instruction is provided by a home school.

Section 2. (a) When a postsecondary educational institution issues a request for proposal or a request for quotation for the construction of any new building, all bidders responding to the request shall provide construction cost estimates for the building along with alternates.

(b) The postsecondary educational institution shall retain the option to select any, or none, of the alternates.

(c) The provisions of this section shall not apply to the construction of any new building if the bidding for the construction has closed and the contract has been awarded prior to the effective date of this act.

(d) As used in this section: (1) "Alternate" means a separate bid, apart from the cost estimates concerning the construction of the new school building, itemizing all the energy efficiency measures that fit the school's size, function and location.

(2) "Building" means any building or structure operated or used for any purpose by, or located upon the land of, any postsecondary educational institution or private postsecondary educational institution.

(3) "Postsecondary educational institution" has the meaning ascribed thereto in K.S.A. 74-3201b, and amendments thereto.

(4) "Energy efficiency measures" mean the use of features or equipment designed to provide energy, utility and operational cost savings and may include, but are not limited to, the following:

(A) Insulation in walls, roofs, floors and foundations and in heating and cooling distribution systems;

(B) building envelope items, such as roofing, masonry, foundation, windows and doors;

(C) automated or computerized energy control systems;

(D) geothermal heating or cooling pumps, heating, ventilating or air conditioning and distribution system modifications or replacements;

(E) caulking and weather-stripping;

(F) lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

(G) energy recovery systems;

(H) daylighting systems;

(I) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity;

(J) tankless hot water systems, solar hot water systems and low-flow bathroom fixtures and toilets; and

(K) any other modification, installation or remodeling approved as an energy, utility or operational cost savings measure by the board of education.

(e) The provisions of this section shall not apply to any postsecondary educational institution that does not receive or expend any state moneys to pay for energy, utility or operational costs.

Sec 3. This act shall take effect and be in force from and after its publication in the Kansas register.



# HOUSE BILL No. 2663

By Committee on Energy and Utilities

2-5

HOUSE ENERGY AND UTILITIES

DATE: 2/15/2010

ATTACHMENT 3-1

9 AN ACT concerning cities and counties; creating energy management  
10 districts.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Sections 1 through 11, and amendments thereto, shall be  
14 known and may be cited as the ~~energy management district act.~~

15 Sec. 2. As used in this act:

16 (a) "Energy efficiency improvement" means an installation or modi-  
17 fication that is designed to reduce energy consumption in residential or  
18 commercial buildings, and may include, but is not limited to, the  
19 following:

20 (1) Insulation in walls, roofs, floors and foundations and in heating  
21 and cooling distribution systems;

22 (2) ~~storm windows and doors, multi-glazed windows and doors, heat-~~  
23 ~~absorbing or heat reflective glazed and coated window and door systems,~~  
24 ~~additional glazing, reductions in glass area and other window and door~~  
25 ~~system modifications that reduce energy consumption;~~

26 (3) ~~automatic energy control systems;~~

27 (4) ~~heating, ventilating or air conditioning and distribution system~~  
28 ~~modifications or replacements in buildings or central plants;~~

29 (5) caulking and weather-stripping;

30 (6) replacement or modification of lighting fixtures to increase the  
31 energy efficiency of the system without increasing the overall illumination  
32 of a residential or commercial building unless the increase in illumination  
33 is necessary to conform to the applicable building code for the proposed  
34 lighting system;

35 (7) energy recovery systems;

36 (8) daylighting systems; and

37 (9) any other modification, installation or remodeling approved as a  
38 utility cost-savings measure by the governing body.

39 (b) "Governing body" means the governing body of a city or the board  
40 of county commissioners of a county.

41 (c) "Renewable energy improvement" means a fixture, product, sys-  
42 tem, device or interacting group of devices installed behind the meter of  
43 any residential or commercial building that produces energy from renew-

property assessed  
renewable energy  
and energy  
efficiency (PARE)  
program act.

residential,  
commercial,  
industrial or  
governmental

building envelope  
items, such as  
roofing, masonry,  
foundation,  
windows and doors

automated or  
computerized  
energy control  
systems

geothermal  
heating/cooling  
pumps,

(9) cogeneration  
systems that produce  
steam or forms of  
energy such as heat, as  
well as electricity;  
(10) tankless hot water  
systems, solar hot water  
systems and low-flow  
bathroom fixtures and  
toilets; and  
renumbering accordingly

residential,  
commercial,  
industrial, or  
governmental

1 able resources, including, but not limited to, photovoltaic systems, solar  
2 thermal systems, small wind systems, biomass systems or geothermal sys-  
3 tems, as may be authorized by the governing body.

4 Sec. 3. The governing body of any city or county, in accordance with  
5 the procedures and subject to the limitations of this act, may establish  
6 one or more energy management districts within the city or county for  
7 the purpose of constructing, installing or acquiring energy efficiency im-  
8 provements or renewable energy improvements.

9 Sec. 4. Any city or county may construct energy efficiency improve-  
10 ments or renewable energy improvements and assess the cost thereof,  
11 wholly or in part, against the property especially benefited by such im-  
12 provements. The improvements shall be authorized by city ordinance or  
13 county resolution and shall be constructed under the direction of the  
14 municipal engineer or other officer having similar duties or under the  
15 direction of the governing body in accordance with plans and specifica-  
16 tions adopted by the governing body or, if such improvements qualify  
17 pursuant to the ordinance or resolution of the governing body, the owner  
18 of the real property may arrange for the improvements and obtain fi-  
19 nancing for the improvements from the city or county through the process  
20 set forth in the ordinance or resolution forming the district.

21 Sec. 5. Any city or county may initiate the formation of an energy  
22 management district by the adoption of a resolution of intent. Such res-  
23 olution of intent shall contain the following: (a) The intent to designate  
24 an area for the assessment, even if the area will cover the entire city or  
25 county; (b) a description of the boundaries of the proposed district; (c) a  
26 general description of the goals and details to be provided within the  
27 district; (d) a finding that the district served a public purpose of the gov-  
28 erning body by achieving its defined goals; (e) a summary of the eligible  
29 energy efficiency improvements and renewable energy improvements; (f)  
30 such other information as deemed advisable by the governing body; and  
31 (g) the time and place of a public hearing to be held by the governing  
32 body to consider establishment of the district.

33 Sec. 6. Notice of the public hearing on the proposed establishment  
34 of an energy management district shall be published once in the official  
35 newspaper of the city or county and a copy of such notice and a copy of  
36 the resolution of intent shall be mailed by first class mail to all owners of  
37 real property in the proposed district. Publication and mailing shall be at  
38 least 30 days prior to the hearing and the hearing shall be held not later  
39 than 60 days after adoption of the resolution of intent.

40 Sec. 7. If the city or county, following the public hearing, determines  
41 it advisable and in the public interest to establish a district, the city or  
42 county shall create the district by ordinance or resolution, as appropriate.  
43 The ordinance or resolution creating the district shall contain the follow-

, with a plurality of  
owners of real  
property  
determining it  
advisable.

3-2

3-3

1 credit or taxing powers of the city or county or be payable out of any  
2 funds or properties other than the revenues described in subsection (a).

3 (c) Bonds issued pursuant to this section shall be special obligations  
4 of the city or county and are declared to be negotiable instruments. Such  
5 bonds shall be executed by the authorized representatives of the city or  
6 county and sealed with the corporate seal of the city or county. All details  
7 pertaining to the issuance of the bonds and terms and conditions thereof  
8 shall be determined by ordinance or resolution of the city or county. The  
9 provisions of K.S.A. 10-106, and amendments thereto, requiring a public  
10 sale of bonds shall not apply to bonds issued under this section. All bonds  
11 issued pursuant to this section and all income or interest therefrom shall  
12 be exempt from all state taxes except inheritance taxes. Such bonds shall  
13 contain none of the recitals set forth in K.S.A. 10-112, and amendments  
14 thereto. Such bonds shall contain the following recitals: The authority  
15 under which such bonds are issued; that such bonds are in conformity  
16 with the provisions, restrictions and limitations thereof; and that such  
17 bonds and the interest thereon are to be paid from the money and rev-  
18 enues described in subsection (a). Such bonds shall mature in no more  
19 than 22 years.

20 (d) Any city or county issuing bonds under the provisions of this act  
21 may refund all or part of such issue pursuant to the provisions of K.S.A.  
22 10-116a, and amendments thereto.

23 (e) Bonds issued under the provisions of this act shall be in addition  
24 to and not subject to any statutory limitation of bonded indebtedness  
25 imposed on the city or county.

26 Sec. 11. (a) The governing body which has created an energy man-  
27 agement district shall levy and collect special assessments upon real prop-  
28 erty in the district on which energy efficiency improvements or renewable  
29 energy improvements have been made pursuant to this act. The governing  
30 body shall provide for the payment of all costs of such improvements but  
31 of the proceeds of such special assessments. In making such assessments,  
32 the city or county shall follow the procedures provided in K.S.A. 12-6a01  
33 et seq., and amendments thereto, except that the cost to be assessed shall  
34 be determined in accordance with the terms of the contract between the  
35 city or county and the owner of the real property upon which the im-  
36 provements are made.

37 (b) Assessments pursuant to this act shall be payable at the time of  
38 the payment of general property taxes. All assessments shall bear interest  
39 at such rate as provided by the contract between the city or county and  
40 the owner of the real property upon which the improvements are made.  
41 Such assessments shall be collected and paid over to the city or county  
42 treasurer in the same manner as other taxes of the city or county are  
43 collected and paid. At any time prior to the date when an assessment is

(d) Any city or county issuing  
bonds under the provisions of  
this act shall not use the bonds  
to generate revenue.  
relettering accordingly

, not to exceed 5% of  
such improvements,

reasonable the

1 due, the owner of the real property may pay the whole of the assessment  
2 against such property with interest accrued to the date of payment to the  
3 city or county treasurer.  
4 ~~Sec. 12.~~ This act shall take effect and be in force from and after its  
5 publication in the statute book.

Sec. 12

(a) No improvement shall be made if the governing body determines that the owner of the real property cannot demonstrate sufficient income or other sufficient financial means, excluding the value of the real property, to pay the special assessment.

(b) Real property shall be considered eligible for purposes of this act if the total unpaid balances of debts secured by mortgages and other liens does not exceed 80% of the market value of the real property.

(c) The costs of renewable energy and energy efficiency improvements on the property shall not exceed 10% of the appraised value of the property.

(d) Any lien filed pursuant to a special assessment authorized by this act shall be subject to all prior liens of record. The lien must be filed in the office of the register of deeds of the county where the real property is located and must contain the legal description of all real property in the county subject to the lien.

Renumbering accordingly

# HOUSE BILL No. 2662

By Committee on Energy and Utilities

2-5

9 AN ACT concerning energy; establishing the wind generation permit act.

10

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

12 Section 1. Sections 1 through 7, and amendments thereto, shall be  
13 known and may be cited as the wind generation permit act.

14 Sec. 2. As used in the wind generation permit act:

15 (a) "Applicant" means a person or entity filing an application under  
16 this act.

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

18 (c) "Commercial wind energy conversion system" means a wind-  
19 driven machine that converts wind energy into electrical power for the  
20 primary purpose of sale, resale or off-site use.

21 (d) "Facility" means an electric generation facility, whose main pur-  
22 pose is to supply electricity, consisting of one or more wind turbines and  
23 other accessory structures and buildings including substations, meteoro-  
24 logical towers, electrical infrastructure, transmission lines and other ap-  
25 purtenant structures and facilities. "Facility" does not mean a stand-alone  
26 wind turbine constructed primarily for residential or farm use.

27 (e) "Owner" means any entity or entities having an equity ownership,  
28 at any time, in a facility under this act, including their respective succes-  
29 sors and assigns.

30 (f) "Turbine" means a wind energy conversion system that converts  
31 wind energy into electricity through the use of a wind turbine generator,  
32 and includes the nacelle, rotor, tower and pad transformer, if any.

33 Sec. 3. No wind facility or individual turbine capable of generating  
34 more than 0.5 megawatts of electricity shall be constructed or operated  
35 within this state without having the county commissioners in every county  
36 in which the facility or turbine will be located grant a permit for the  
37 construction and operation of the facility or turbine. A permit may be  
38 approved if an applicant complies with the following:

39 (a) Provide notice in writing to all landowners of record within 1 mile  
40 and to any municipality, as defined in K.S.A. 75-1117, and amendments  
41 thereto, within 20 miles of the proposed facility or turbine. Notice of the  
42 facility or turbine shall be published in the official newspaper of the city  
43 or county where the proposed facility or turbine would be located. The

for a permit to construct a facility or a turbine

New section 2, see insert  
Renumber accordingly

within the boundaries of the area to be developed

of the boundaries of the area to be developed

HOUSE ENERGY AND UTILITIES

DATE: 2/15/2010

ATTACHMENT 4-1

4-2

1 notice shall include a description of the location of the proposed facility  
2 or turbine and the size of the proposed facility or turbine.

3 (b) Provide an emergency management plan to the county commis-  
4 sioners prior to the beginning of construction. Prior to submitting the  
5 plan to the county commissioners the plan will be submitted for review  
6 to the affected fire chiefs, county emergency management coordinator  
7 and the county sheriffs in the affected counties. ~~The emergency manage-  
8 ment plan shall be reviewed following construction and prior to com-  
9 mencing operation.~~

unless an emergency plan  
has already been approved  
by the county,

10 (c) Provide documentation satisfactory to the board of county com-  
11 missioners that access has been provided to the proposed site. All private  
12 roads located within the land area for the proposed facility or turbine  
13 shall be clearly marked as private roadways. The county is under no ob-  
14 ligation to repair, maintain or accept any dedication of such roads to the  
15 public use. ~~A traffic study of the county roadways leading to the proposed  
16 site and surrounding ancillary roads shall be submitted to the county and  
17 a developer must enter into a road use agreement with the county prior  
18 to commencement of construction.~~

The applicant

19 (d) Provide a preliminary site plan indicating proposed roadways, pro-  
20 posed turbine locations, proposed substation locations, transmission, col-  
21 lector and gathering lines and other ancillary facility components. ~~Follow-  
22 ing construction and prior to commencing operations, the site plan must  
23 be supplemented to show the final location of facilities.~~

After 1.1 perimeter  
of the facility

24 (e) The applicant has complied with the following minimum safety  
25 setback requirements:

of any nonparticipating or participating  
landowner to a distance not less than 1,000  
feet unless the land owner has agreed in  
writing to a lesser setback. There need be no  
property line setbacks within the facility  
between participating land owners

26 (1) Setbacks of all turbines from the nearest property line, and from  
27 the nearest public road right-of-way, to a distance not less than one and  
28 one-half times the height of the turbine, including the blades;

29 (2) setbacks of all turbines from any residential or occupied structure  
30 to a distance of not less than 1/4 mile, with the signed written consent of  
31 the landowner of the structure and to a distance not less than 1/2 mile  
32 without the signed permission of the landowner of the structure; and

a city to a distance not less than  
1,000 feet.

33 (3) setbacks of all turbines from the legal limits of any town, munic-  
34 ipality, as defined in K.S.A. 75-1117, and amendments thereto, or platted  
35 subdivision to a distance not less than 1/2 mile.

an environmental assessment of the proposed  
facility or turbine, identifying all potential direct  
and indirect adverse impacts on natural  
resources including, but not limited to, native  
prairie and other ecosystems, wetlands and  
other wildlife staging areas, wildlife migration  
corridors, wildlife habitats, historical and  
cultural sites and antiquities, water resources  
and soil quality.

36 (f) The applicant has submitted ~~a qualified professional analysis of  
37 the facility or turbine, identifying all potential adverse impacts on natural  
38 resources including, but not limited to, the facility or turbine's affect on  
39 wetlands, native grasslands and other fragile or rare ecosystems, historical  
40 and cultural sites and antiquities, wildlife habitats, avian migration cor-  
41 ridors, water resources and soil quality.~~ The application shall describe in  
42 detail all measures proposed to avoid or mitigate any potential adverse  
43 impacts on natural resources and the expected net effects of these meas-

4-3

1 ures. The board of county commissioners may refer an application for  
2 analysis and comment to the Kansas department of agriculture, the Kan-  
3 sas department of wildlife and parks, the state historical society, the Kan-  
4 sas department of health and environment and any other appropriate state  
5 agencies.

and

6 (g) Provide satisfactory proof of financial assurance, ~~satisfactory plans~~  
7 for decommissioning and reclamation of the proposed facility or turbine,  
8 ~~and having satisfied the requirements of the Kansas decommissioning~~  
9 ~~trust fund pursuant to section 6, and amendments thereto.~~

10 Sec. 4. No later than 45 days after receiving an application for a per-  
11 mit pursuant to section 3, and amendments thereto, the county commis-  
12 sioners shall hold a public hearing on construction of the proposed facility  
13 or turbine.

14 Sec. 5. (a) The applicant shall submit a decommissioning plan to the  
15 county. The plan shall include the anticipated life of the facility or turbine,  
16 the estimated decommissioning costs net of salvage value in current dol-  
17 lars and the anticipated manner in which the facility or turbine will be  
18 decommissioned and the site restored.

abandonment

19 (b) (1) The facility or turbine owner shall, at the facility or turbine  
20 owner's expense, complete decommissioning of the facility or individual  
21 turbines within 12 months after the ~~end of the useful life of the facility~~  
22 ~~or the useful life of the individual turbines.~~ Decommissioning shall in-  
23 clude the requirement that all equipment be removed to a depth of two  
24 feet below the surrounding ground surface, ~~access roads removed to the~~  
25 ~~landowner's satisfaction~~ and the ground restored to the condition speci-  
26 fied in the reclamation plan. Access roads may be maintained if so re-  
27 quested by the landowner and may not be included within the reclamation  
28 requirements.

29 (2) The commissioners of the county where the facility or turbine is  
30 located shall make the final determination as to the satisfactory comple-  
31 tion of decommissioning. A public hearing shall be held no less than one  
32 week prior to a vote for approval of the decommissioning of the facility.

33 ~~(c) (1) An individual wind turbine shall be considered to have been~~  
34 ~~abandoned when the turbine is incapable of producing more than 20%~~  
35 ~~of the average amount of electricity produced by such turbine in com-~~  
36 ~~parable time periods, adjusted for actual wind conditions, as determined~~  
37 ~~by the county, for a period of at least six consecutive months and there~~  
38 ~~is no demonstrated viable plan to restore the equipment to operating~~  
39 ~~condition. An extension of the six month time period may be granted by~~  
40 ~~the county upon presentation of sufficient justification by the turbine~~  
41 ~~owner.~~

42 ~~(2) An entire facility shall be considered to have been abandoned~~  
43 ~~when at least 50% of the individual wind turbines have not produced~~

4-4

1 electricity for a period of at least six consecutive months and there is no  
2 demonstrated viable plan to restore the equipment to operating condi-  
3 tion. An extension of the six month time period may be granted by the  
4 county upon presentation of sufficient justification by the facility owner.

(c)

5 (d) ~~If the facility or turbine owner does not complete decommission-~~  
6 ~~ing within the periods prescribed in this section, the county may take~~  
7 ~~necessary measures to complete decommissioning. The entry into and~~  
8 ~~submission of evidence of a participating landowner agreement to the~~  
9 ~~county shall constitute agreement and consent of the parties to the agree-~~  
10 ~~ment, the parties' respective heirs, successors and assigns that the county~~  
11 ~~may take such action as necessary to implement the decommissioning~~  
12 ~~plan.~~

at the land owner's  
request,

13 Sec. 6. (a) ~~The Kansas decommissioning trust fund is hereby created~~  
14 ~~in the state treasury and shall be administered by the commission for the~~  
15 ~~decommissioning of facilities and turbines in the state. The commission~~  
16 ~~shall remit all moneys received by or for it from fees, charges or penalties~~  
17 ~~to the state treasurer in accordance with the provisions of K.S.A. 75-4215,~~  
18 ~~and amendments thereto. Upon receipt of each such remittance, the state~~  
19 ~~treasurer shall deposit the entire amount in the state treasury. All ex-~~  
20 ~~penditures from the Kansas decommissioning trust fund shall be made~~  
21 ~~in accordance with appropriation acts upon warrants of the director of~~  
22 ~~accounts and reports issued pursuant to vouchers approved by the chair-~~  
23 ~~person of the state corporation commission, or by a person or persons~~  
24 ~~designated by the chairperson.~~

25 (b) ~~The commission shall require the payment of a fee from all fa-~~  
26 ~~ilities located in the state, to fund the Kansas decommissioning trust~~  
27 ~~fund. The fee may be based upon total generation nameplate capacity.~~

28 (c) ~~The Kansas decommissioning trust fund shall be used exclusively~~  
29 ~~for the purpose of assisting the facility owner in the completion of the~~  
30 ~~decommissioning and reclamation of abandoned facilities. Upon failure~~  
31 ~~to complete decommissioning and the abandonment by the facility owner,~~  
32 ~~a county may petition to the commission for funding to complete the~~  
33 ~~decommissioning and reclamation of a facility or a turbine, up to the~~  
34 ~~amount, plus earnings, contributed to the fund by every owner of the~~  
35 ~~abandoned facility.~~

a city

36 (d) ~~The Kansas decommissioning trust fund shall not be used for~~  
37 ~~purposes not enumerated in this section.~~

(c) Nothing in this act shall be  
construed to require a county to  
issue a permit to an applicant.  
  
And relettering accordingly

38 Sec. 7. (a) Nothing in this act shall be construed to preclude a county  
39 or a municipality, as defined in K.S.A. 75-1117, and amendments thereto,  
40 from adopting more stringent permitting standards than those established  
41 by this act.

42 (b) Nothing in this act shall be construed to preclude a county from  
43 charging reasonable permitting fees.



4-5

1 (c) The provisions of this act shall apply to the initial applicant and  
2 to each successive owner, leasor and holder of an equity interest in a  
3 facility.

4 (d) The provisions of this act shall not apply to facilities or turbines  
5 constructed prior to the effective date of this act.

6 Sec. 8. This act shall take effect and be in force from and after its  
7 publication in the statute book.

Insert 2

Section 2. (a) The provisions of this act shall apply to all counties that do not have any zoning regulations or wind development regulations unless the board of county commissioners adopts a resolution rejecting the provisions of this act.

(b) The board of county commissioners of a county may initiate the rejection of the provisions of this act by issuing a resolution of intent. The resolution of intent shall state the board's intent to reject the provisions of this act, as in effect at the time of the issuance of the resolution of intent, and the time and place of a public hearing to be held by the board to consider rejection of the act.

(c) Notice of the public hearing on the proposed rejection of the wind generation permit act shall be published once in the official county newspaper. Publication shall be at least 30 days prior to the hearing and the hearing shall be held not later than 60 days after adoption of the resolution of intent.

(d) If the board of county commissioners, following the public hearing, determines it advisable and in the public interest to reject the provisions of this act, it shall reject the act by resolution.

(e) Within 45 days following publication of a resolution rejecting the provisions of this act pursuant to this section, the residents of the county may file with the board of county commissioners a written petition in opposition to the rejection of the provisions of this act. Upon a finding that a petition opposing rejection of the act was signed by 20% of the qualified voters residing within the county based upon the total votes cast for the office of secretary of state at the last general election, the provisions of this act shall be adopted by the board unless the board subsequently adopts, by at least a  $\frac{3}{4}$  vote, a resolution rejecting the provisions of the act.

Section 1. As used in sections 1 through 5, and amendments thereto:

(a) "Affected landowner" means any person, firm, partnership, corporation, limited liability corporation or association owning an interest in the surface of any parcel of land, or portion thereof, on the date the notice required by subsection (b) of section 2, and amendments thereto, is sent, which is located within 2,000 feet of the physical boundary of the land the developer has leased or intends to lease for the purpose of constructing a facility.

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

(c) "Developer" means any person, firm, partnership, corporation, limited liability corporation, association, cooperative corporation or other entity desiring to construct all or any portion of a facility.

(d) "Facility" means an electric generation facility consisting of one or more wind turbines and all buildings and transmission system wires within the boundaries of land which the developer has leased or intends to lease for the purpose of constructing a facility.

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

(b) Following the signing of leases and access agreements with individual land owners a developer shall provide notice in writing to all landowners of record within 2000 feet of the property line of the boundaries of land which the developer has leased or intends to lease for the purpose of constructing a facility.

(c) Prior to any public hearings, the developer and the board may negotiate terms associated with public access, contributions to the community and such other items as the developer or board deem appropriate.

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

(b) Prior to the hearing, the developer shall provide the board with copies of lease terms,

excluding financial terms, but including provisions detailing a financially responsible plan for decommissioning the facility. In reviewing the decommissioning plan, the board shall not require separate binding or escrow accounts.

(c) Upon conclusion of the hearing the board shall by majority vote approve or disapprove the proposed siting plans set forth in the application. If approved, the board is hereby authorized to adopt a certificate of public benefit certifying such approval. The board may make its approval conditional on the developer meeting one or more of the following conditions and if such conditions are not met in the time specified by the board, then the board is authorized to withdraw its approval of the application: (1) Bonding or cash escrows sufficient to provide decommissioning of the entire facility and reclamation of the site; (2) bonding or cash escrows sufficient to mitigate damage to roads and bridges or increased demand on public accommodations or administrative burdens attributable to the construction and maintenance of a facility; (3) minimum setbacks from occupied buildings, public roads and the property of non-participating landowners of no less than 1.1 times the height of the turbine, nacelle and blades at the highest point; or (4) any requirements that the board deems appropriate. The board shall render its decision within 30 days after conclusion of the hearing, and such decision shall be published in a newspaper of general circulation in the county once each week for three consecutive weeks.

(d) The board shall consider only direct adverse impacts to adjacent landowners in reconsidering the board's prior decision. Direct adverse impacts include, but are not limited to: Changes in water flows and risk of damage to property or access during construction. Direct adverse impacts shall not include visual impact or turbine or blade noises that are lower than the sounds of passing 18-wheeled vehicle truck traffic at the same distance. Claims of potential health risks by adjacent landowners must have been previously scientifically documented in reviewed medical or scientific publications.

Section 4. Notwithstanding the provisions of this act, a board may designate different setback standards that account for unique or sensitive land use issues.

Section 5. (a) The provisions of this act shall not apply to: Any facility of which the board has been notified by the developer of negotiated leases or memos of leases on file with the county prior to the effective date of this act; a county that has issued a resolution or permit for a facility prior to the effective date of this act; a county in which developers and county commissioners are actively negotiating road and other access issues prior to the effective date of this act; and any county that has zoning regulations or wind development regulations prior to the effective date of this act.

(b) Counties may opt out of the provisions of this act by enacting zoning regulations or wind development regulations.

Section 6. This act shall take effect and be in force from and after January 1, 2011, and its publication in the statute book.