

## HOUSE BILL No. 2273

By Committee on Energy, Utilities and Telecommunications

2-12

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1 AN ACT concerning energy; establishing the wind generation permit and  
2 property protection act; relating to certain electric generation facilities;  
3 setbacks from certain property; boards of county commissioners,  
4 approval.

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

7 Section 1. (a) For the purposes of this section:

8 (1) "Airport" means any area of land or water designed and set aside  
9 for the landing and taking-off of aircraft and utilized or to be utilized in the  
10 interest of the public for such purposes, including any airfield used for  
11 military or commercial purposes.

12 (2) "Applicant" means any developer filing an application pursuant to  
13 this act. In the event that there is more than one person or entity qualifying  
14 as a developer, any one of such persons or entities may serve as the  
15 applicant pursuant to this section.

16 (3) "Board" means the board of county commissioners of the county  
17 to which an application is submitted.

18 (4) "Developer" means any person, firm, partnership, corporation,  
19 limited liability corporation, association, cooperative corporation or other  
20 entity desiring to construct all or any portion of a facility and holding by  
21 lease, easement or otherwise, the real property rights necessary for  
22 construction of a facility. The term "developer" includes any of the persons  
23 or entities that may, over time, hold record title to the real property rights  
24 used or intended to be used for a facility.

25 (5) "Facility" means an electric generation facility consisting of one  
26 or more wind turbines and any accessory structures and buildings,  
27 including substations, meteorological towers, electrical infrastructure,  
28 transmission lines and other appurtenant structures located within the  
29 boundaries of land where a developer plans to construct all or a portion of  
30 such electric generation facility.

31 (6) "Residential property" means any single-family dwelling, multi-  
32 family dwelling that contains two or more separate residential dwelling  
33 units, rural home site or farm home site that has been used as a residence  
34 within the last three years.

35 (7) "System height" means the total height of a wind turbine as  
36 measured with a blade of such turbine in a vertical position.

1 (b) Except as otherwise provided in subsection (c), no facility shall be  
2 constructed within this state unless the setback distance from the nearest  
3 wind turbine of the facility, as measured from the end of one blade in a  
4 horizontal position, is as follows:

5 (1) Not less than 12 times system height or 7,920 feet, whichever is  
6 greater, from any residential property or public building;

7 (2) not less than 20 times system height or 15,840 feet, whichever is  
8 greater, from any airport;

9 (3) not less than 20 times system height or 15,840 feet, whichever is  
10 greater, from any local, state or federal wildlife refuge, public hunting area  
11 or public park; and

12 (4) not less than three times system height or 1,500 feet, whichever is  
13 greater, from any property line of real property that is within such setback  
14 distance.

15 (c) The setback distances provided in subsection (b) shall only be  
16 waived if an owner of any such property waives the applicable setback  
17 distance through a written agreement with the developer of the facility.

18 (d) Prior to the construction of any facility, the board of county  
19 commissioners of any county that contains any property within the setback  
20 distances, established pursuant to subsection (b), shall approve an  
21 application for the construction of the facility. An application shall be  
22 approved by a board if the applicant complies with the following, in  
23 addition to any other reasonable requirements imposed by the board by  
24 resolution, without respect to whether such requirements are imposed as  
25 part of any zoning regulation pursuant to K.S.A. 12-741 et seq., and  
26 amendments thereto:

27 (1) The developer shall submit an application to the board on a form  
28 and in the manner specified by the board. Such application shall include:  
29 (A) The name, address and telephone number of the applicant and the  
30 applicant's contact person for the construction of the facility; and (B) a  
31 detailed site plan for the facility, including, but not limited to, proposed  
32 locations for turbines and any accessory structures and buildings and a  
33 showing of compliance with the setback distances established pursuant to  
34 subsection (b).

35 (2) The applicant shall demonstrate to the board that all applicable  
36 setback distances pursuant to subsection (b) will be satisfied or have been  
37 waived through written agreements.

38 (3) The applicant shall demonstrate that each turbine of the facility  
39 will only be equipped with navigational lights that are activated by  
40 infrared or other radar technology used to detect nearby aircraft and that  
41 such lights will not be activated absent such technology, unless the board,  
42 by resolution, has modified this requirement.

43 (4) The applicant shall provide notice of the application and the

1 proposed construction of the facility in writing to all owners of any  
2 property located within any applicable setback distances provided in  
3 subsection (b). The applicant shall also provide notice of application and  
4 the proposed construction of the facility by publishing such notice in the  
5 official newspaper of the county in which the proposed facility would be  
6 located and in any county that contains property within any of the setback  
7 distances provided in subsection (b). The notice shall include a description  
8 of the location of the proposed facility, the total number of wind turbines  
9 to be constructed and the system height of the wind turbines to be  
10 constructed.

11 (e) (1) No later than 90 days and no sooner than 20 days after  
12 publication is made pursuant to subsection (d), the board shall hold a  
13 public hearing on the application. The board shall deny the application if  
14 the board finds that the developer failed to properly obtain waivers of any  
15 applicable setback distances pursuant to subsection (c) or failed to comply  
16 with any of the requirements set forth in subsection (d).

17 (2) If an application for construction is denied, nothing in this section  
18 shall prohibit a developer from resubmitting an application for  
19 construction to the board pursuant to this section.

20 (f) If a developer obtains a waiver of setback distance pursuant to the  
21 provisions of subsection (c), such developer shall not impose on any  
22 owner any conditions restricting public disclosure of the terms of the  
23 waiver, unless such waiver is part of a lease or easement with respect to  
24 real property to be used as a part of the facility.

25 (g) Nothing in this section shall prohibit zoning regulations adopted  
26 pursuant to K.S.A. 12-741 et seq., and amendments thereto, from imposing  
27 additional conditions or limitations with respect to facilities, approval of  
28 facilities or setbacks required for facilities.

29 (h) This section shall be known and may be cited as the wind  
30 generation permit and property protection act.

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