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

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

Section 1. (a) For the purposes of this section:
(1) "Airport" means any area of land or water designed and set aside
for the landing and taking-off of aircraft and utilized or to be utilized in the
interest of the public for such purposes, including any airfield used for
military or commercial purposes.
(2) "Applicant" means any developer filing an application pursuant to
this act. In the event that there is more than one person or entity qualifying
as a developer, any one of such persons or entities may serve as the
applicant pursuant to this section.
(3) "Board" means the board of county commissioners of the county
to which an application is submitted.
(4) "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 and holding by
lease, easement or otherwise, the real property rights necessary for
construction of a facility. The term "developer" includes any of the persons
or entities that may, over time, hold record title to the real property rights
used or intended to be used for a facility.
(5) "Facility" means an electric generation facility consisting of one
or more wind turbines and any accessory structures and buildings,
including substations, meteorological towers, electrical infrastructure,
transmission lines and other appurtenant structures located within the
boundaries of land where a developer plans to construct all or a portion of
such electric generation facility.
(6) "Residential property" means any single-family dwelling, multi-
gamily dwelling that contains two or more separate residential dwelling
units, rural home site or farm home site that has been used as a residence
within the last three years.
(7) "System height" means the total height of a wind turbine as
measured with a blade of such turbine in a vertical position.
(b) Except as otherwise provided in subsection (c), no facility shall be constructed within this state unless the setback distance from the nearest wind turbine of the facility, as measured from the end of one blade in a horizontal position, is as follows:

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

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

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

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

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

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

(1) The developer shall submit an application to the board on a form and in the manner specified by the board. Such application shall include:

(A) The name, address and telephone number of the applicant and the applicant's contact person for the construction of the facility; and (B) a detailed site plan for the facility, including, but not limited to, proposed locations for turbines and any accessory structures and buildings and a showing of compliance with the setback distances established pursuant to subsection (b).

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

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

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

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

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

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

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

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

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