

SENATE BILL No. 455

By Committee on Utilities

2-5

AN ACT enacting the industrial wind turbine development act.

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

Section 1. As used in this act the following terms shall have the meanings indicated below:

(a) "Industrial wind turbine" means any device for the conversion of wind energy to electrical energy with a total height from ground to the highest point of the device in excess of 90 feet;

(b) "industrial wind turbine development" means a site on which one or more industrial wind turbines is constructed for the purpose of generating electricity to be used off site;

(c) "commission" means the state corporation commission;

(d) "cultural preservation area" means, with respect to an application for a permit for an industrial wind turbine development, all registered historical sites, scenic byways and undisturbed areas of tallgrass prairie; and

(e) "Flint Hills" means the eco-region identified as the Flint Hills in the Kansas-Nebraska eco-region map prepared by EPA, USDA forest service, the United States geological survey, et al.

Sec. 2. No person or entity may begin site preparation for or construction of an industrial wind turbine development and no industrial wind turbine development shall begin the sale of electricity generated by an industrial wind turbine within the Flint Hills without first acquiring a permit. This act shall not be deemed to apply to any industrial wind development which is constructed and selling electricity prior to April 1, 2004.

Sec. 3. (a) Whenever any person or entity desires to obtain a permit for an industrial wind turbine development, it shall file an application with the commission.

(b) An application or an industrial wind turbine development in the Flint Hills shall:

(1) Identify by legal description the property on which the development is proposed;

(2) disclose the number of wind turbines proposed;

(3) disclose the location, height, service life expectancy and manu-

- 1 manufacturer and model of each wind turbine proposed to be constructed;
- 2 (4) for each wind turbine disclose its electric generation specifica-
- 3 tions, the level of noise it produces in operation, the types and extent of
- 4 potential interference with radio frequency transmissions and incidents
- 5 of failure or malfunction of similar turbines known to the developer after
- 6 inquiry to the manufacturer which have endangered life or property;
- 7 (5) identify all threatened or endangered species populations or hab-
- 8 itat for threatened or endangered species within two miles of the property
- 9 on which the development is proposed;
- 10 (6) identify all owners of land within two miles of the property on
- 11 which the development is proposed;
- 12 (7) include an environmental impact statement meeting the standards
- 13 under the national environmental policy act of 1969 (NEPA) and its im-
- 14 plementing regulations applicable to major federal actions significantly
- 15 affecting the quality of the human environment;
- 16 (8) identify the route by which the applicant proposes to transport
- 17 electricity generated by wind turbines in the development to the power
- 18 grid including identifying all landowners of record from whom easements
- 19 would be needed to accommodate the route;
- 20 (9) provide copies of all lease or easement agreements for the prop-
- 21 erty on which the development is proposed, including agreements with
- 22 respect to transmission lines used to transport electricity from the devel-
- 23 opment to the power grid;
- 24 (10) identify all land uses within two miles of the property on which
- 25 the development is proposed which generate income from the natural
- 26 features of the environment or the historical or cultural attributes of the
- 27 area including but not limited to tourism or recreational uses which rely
- 28 on scenic views or predominantly rural environs;
- 29 (11) identify the impact on farmland of the proposed development
- 30 in a form substantially similar and containing the same information re-
- 31 quired by the form used by federal agencies who wish to convert farmland
- 32 to nonagricultural uses under the farmland protection policy act and its
- 33 implementing regulations;
- 34 (12) identify the extent to which the proposed development will be
- 35 dependent on the continuation of any favorable taxation treatment by
- 36 federal, state and local government, including tax credits, accelerated de-
- 37 preciation allowances and tax exemptions, to maintain its economic
- 38 viability;
- 39 (13) provide an estimate of the cost of decommissioning each turbine;
- 40 (14) post a bond for the cost of decommissioning each turbine at the
- 41 end of its anticipated life.
- 42 In addition, the applicant shall file with the application such documents
- 43 pertaining to the construction, operation and maintenance of the pro-

1 posed industrial wind turbine development and such other matters as may
2 be deemed relevant thereto and as may be required by the rules and
3 regulations of the commission.

4 (c) Upon the filing of a complete application the commission shall fix
5 a time for a public hearing on such application, which shall not be less
6 than 45 nor more than 180 days from the date the application was filed
7 and shall be conducted in accordance with the provisions of the Kansas
8 administrative procedures act, to determine the necessity of the proposed
9 wind turbine development and its compliance with the standards of this
10 act and such further rules and regulations as the commission may adopt
11 with respect to the safety and public welfare which shall, at a minimum,
12 set limits with respect to noise levels and radio frequency transmission
13 interference sufficient to insure zero impact on existing residences near
14 the proposed industrial wind turbine development. The commission shall
15 fix the place for hearing, which shall be in the county in which is located
16 the major portion of the land which has been proposed for the industrial
17 wind turbine development.

18 (d) The commission shall publish notice of the time, place and subject
19 matter of such hearing in newspapers having general circulation in the
20 counties in which is located any portion of the land which has been pro-
21 posed for use in the industrial wind turbine development once each week
22 for three consecutive weeks, the last publication to be not less than five
23 days before such hearing date. Written notice of such hearing and a copy
24 of the application also shall be served not less than 20 days prior to the
25 hearing date upon all landowners of land within two miles of the land
26 proposed to be used for the industrial wind turbine development, as
27 shown by the files, records and indexes of the register of deeds of the
28 county in which the land is located, and the chief administrative officer
29 or any person designated by such officer to receive such service, of the
30 department of commerce, department of agriculture, Kansas water office,
31 department of health and environment, department of transportation and
32 the state geological survey. In addition to the information contained in
33 the published notice, such written notice shall state that the applicant has
34 filed the application and supporting documents required by this act and
35 that such application and supporting documents are available in the office
36 of the commission for examination and copying by the person or board
37 or agency desiring copies thereof.

38 (e) The commission shall appoint an attorney to represent the inter-
39 ests of the landowners, other than those leasing lands to the applicant,
40 within two miles of the proposed industrial wind turbine development at
41 the hearing and shall allow a reasonable attorney fee, which shall be taxed
42 as part of the costs thereof. Landowners, at their own expense, may retain
43 counsel to represent their individual interests at such hearing.

1 (f) Except as otherwise provided in this act, the rules and regulations
2 adopted by the commission pursuant to K.S.A. 66-106, and amendments
3 thereto, to govern the commission's proceedings shall be applicable to
4 any proceeding before the commission under this act. The burden of
5 proof shall be on the applicant to establish by a preponderance of evi-
6 dence the necessity of the proposed development; the public benefit of
7 the development outweighs the costs to the public of the development;
8 the compatibility of the proposed development with the existing electric-
9 ity transmission system and any plans with respect to the expansion or
10 development of the existing electricity transmission system prepared, ap-
11 proved or under review by the commission; that the development does
12 not have a visual impact on any cultural preservation area and that the
13 proposed development is not opposed by owners of 25% or more of the
14 property entitled to notice under subsection (d) who do not have a con-
15 tractual relationship with or ownership interest in the applicant or its
16 affiliates with respect to the proposed development. All parties present
17 or represented by counsel at the hearing shall have the opportunity to be
18 heard and the right to cross-examine any witness appearing before the
19 commission at the hearing. The commission shall cause a transcript to be
20 made of the hearing. All costs of any transcript shall be taxed against the
21 applicant. The hearing and all parties' arguments shall be completed
22 within 90 days of the commencement thereof. At any time after the com-
23 mencement of the hearing the applicant may withdraw its application.

24 (g) The commission shall make findings of fact and file such findings
25 with its decision to grant, grant with conditions or withhold the permit
26 applied for. If the applicant satisfies its burden of proof at the public
27 hearing, and obtains all approvals that may be required from any state
28 regulatory agency or local government for the construction and operation
29 of the proposed industrial wind turbine development, the commission
30 shall issue a permit, which shall become effective at the expiration of any
31 agency proceeding for reconsideration.

32 Sec. 4. No cause of action arising out of any decision of the com-
33 mission shall accrue to any party, unless such party shall have petitioned
34 for reconsideration. Any action of the commission pursuant to this act is
35 subject to review in district court in accordance with the act for judicial
36 review of agency actions.

37 Sec. 5. The department of commerce, department of agriculture,
38 Kansas water office, department of health and environment and depart-
39 ment of transportation are hereby empowered and authorized to adopt
40 such rules and regulations governing the location and operation of in-
41 dustrial wind turbine developments in the Flint Hills as are consistent
42 with their respective missions in furtherance of the public health and
43 welfare.

1 New Sec. 6. Sections 1 through 5, and amendments thereto, shall be
2 known and may be cited as the industrial wind turbine development act.
3 Sec. 7. This act shall take effect and be in force from and after its
4 publication in the statute book.

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