

HOUSE BILL No. 2492

By Committee on Energy and Utilities

2-9

9 AN ACT concerning counties; relating to approval of wind power gen-
10 eration facilities; amending K.S.A. 2006 Supp. 19-101a and repealing
11 the existing section also repealing K.S.A. 2006 Supp. 19-101l and
12 K.S.A. 2005 Supp. 19-101a, as amended by section 4 of chapter 92 of
13 the 2006 Session Laws of Kansas.

14

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

16 New Section 1. As used in sections 1 through 4, and amendments
17 thereto:

18 (a) "Affected landowner" means any person, firm, partnership, cor-
19 poration or association owning an interest in the surface of any parcel of
20 land, or portion thereof, on the date the notice required by subsection
21 (b) of section 2, and amendments thereto, is sent, which is located within
22 2,000 feet of the physical boundary of the land the developer has leased
23 or intends to lease for the project.

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

26 (c) "Developer" means any person, firm, partnership, corporation,
27 association, cooperative corporation or other entity desiring to construct
28 all or any portion of a wind power generation facility.

29 (d) "Supermajority" means the affirmative vote of 75% or more of
30 the county commissioners authorized to vote on such matter.

31 (e) "Wind power generation facility" means a wind driven machine
32 of a height of at least 150 feet as measured to the tip of the blade at its
33 highest point that converts wind energy into electrical power for the pri-
34 mary purpose of sale, resale or off-site use.

35 New Sec. 2. (a) Prior to the siting of any wind power generation
36 facility, or expansion thereof, a developer shall submit an application for
37 approval of such siting to the board of county commissioners of any county
38 in which the siting is to be located. The application shall be submitted on
39 such forms and in the manner as specified by the board. The application
40 shall include the following: (1) The name, address and phone number of
41 the developer and the developer's contact person for the project; (2)
42 detailed plans of the development, including all proposed siting locations
43 and the types of wind power generation facilities to be constructed; and

1 (3) the names and addresses of all affected landowners.

2 (b) The developer shall provide written notice of its intent to develop
3 a wind power generation facility, or expansion thereof, to all affected
4 landowners and such notice shall be sent to such landowners prior to the
5 submission of the application required by subsection (a).

6 New Sec. 3. (a) Upon receipt of an application described in section
7 2, and amendments thereto, the board of county commissioners shall
8 conduct a public hearing on such application at a convenient time and
9 location. The board shall give notice of the hearing by publication in a
10 newspaper of general circulation in the county once each week for two
11 consecutive weeks. Such notice shall state the time, location and purpose
12 of such hearing. The hearing shall be held no more than 30 days after
13 the receipt of the application. At the hearing, the board shall receive
14 testimony from the developer and any other interested persons. The hear-
15 ing may be continued by resolution of the board.

16 (b) Prior to the hearing, the board shall require the developer to
17 produce the following relevant information, which may be submitted
18 prior to or at the hearing: (1) A report detailing the developer's compli-
19 ance or noncompliance with the siting guidelines for wind power projects
20 in Kansas as set forth in section 4, and amendments thereto; and (2) a
21 power purchase agreement for the purchase of the energy to be generated
22 by the wind power generation facility or a letter of intent to enter into
23 such agreement executed by the developer and an energy purchaser.

24 (c) Upon conclusion of the hearing the board shall by majority vote
25 approve or disapprove the proposed siting plans set forth in the applica-
26 tion. As a guide in determining the advisability of approving the applica-
27 tion, the board's considerations may include, but not be limited to, any
28 testimony offered at the public hearing and the siting guidelines for wind
29 power projects in Kansas as set forth in section 4, and amendments
30 thereto. If approved the board is hereby authorized to adopt a certificate
31 of public benefit certifying such approval. The board may make its ap-
32 proval conditional on the developer meeting one or more of the following
33 conditions and if such conditions are not met in the time specified by the
34 board, then the board is authorized to withdraw its approval of the ap-
35 plication: (1) Bonding or cash escrows sufficient to provide decommis-
36 sioning of the wind power generation facility and reclamation of the site,
37 including, but not limited to, turbines, access roads, powerlines and as-
38 sociated equipment and infrastructure; (2) bonding or cash escrows suf-
39 ficient to mitigate damage to roads and bridges or increased demand on
40 public accommodations or administrative burdens attributable to the con-
41 struction and maintenance of a wind power generation facility; or (3)
42 minimum setbacks from occupied buildings, public roads or other areas
43 from time to time inhabited by the public to avoid undue risk from turbine

1 blade failure or ice throw. The board shall render its decision within 30
2 days after conclusion of the hearing, and such decision shall be published
3 in a newspaper of general circulation in the county once each week for
4 three consecutive weeks.

5 (d) In the event a protest petition signed by not less than 10% of the
6 affected landowners is filed with the county clerk within 30 days following
7 the date of the last publication of the board's decision, the board shall
8 reconsider the application of the developer and approval of such appli-
9 cation shall require a supermajority vote of the board. The board shall
10 render its decision on reconsideration of the application within 30 days
11 following the date of the filing of the petition.

12 New Sec. 4. (a) The following are siting guidelines for wind power
13 projects in Kansas:

14 (a) Land use guidelines:

15 (1) Agencies and affected landowners have been contacted early in
16 the process to identify potentially sensitive land uses and issues;

17 (2) the developer knows the rules that govern where and how a wind
18 project may be developed in the project area;

19 (3) the developer has reviewed and addressed land use compatibility
20 issues before leasing the land;

21 (4) in the spirit of interacting with all affected landowners in an eq-
22 uitable and fair fashion when proposing lease and option agreements, the
23 developer has provided access or direction to objective background in-
24 formation what will allow the affected landowner to make a fully informed
25 decision;

26 (5) the developer recognizes there are concerns specific to each re-
27 gion in the state, and has consulted with appropriate experts, and re-
28 searched and evaluated the implications of local issues prior to selecting
29 a specific site within the respective region;

30 (6) because of the rarity and high conservation value of the tallgrass
31 prairie it harbors, careful consideration should be given to the impact of
32 wind power projects in the Flint Hills, particularly in the relatively un-
33 fragmented areas of the landscape. In addition, care should be given to
34 avoid damage to unfragmented landscapes and high quality remnants in
35 the Sandhills, Mixed Grass, and Shortgrass prairies in central and western
36 Kansas. When feasible, wind energy development should be located on
37 already altered landscapes, such as extensively cultivated land or areas
38 already developed or both. An undeveloped buffer adjacent to intact prai-
39 ries is also desirable; and

40 (7) the developer has planned for efficient use of the land, consoli-
41 dated necessary infrastructure requirements whenever possible and care-
42 fully evaluated current transmission and market access.

43 (b) Noise management guidelines:

- 1 (1) In evaluating prospective sites, the developer has considered
2 whether there are adequate setbacks from residential areas and rural
3 homes, especially where the residential unit is in a relatively less windy
4 or quieter location than the turbines, and recognized that residents who
5 support the wind system may some day be replaced by others who will
6 object to the noise; and
- 7 (2) where acoustic levels are critical because of nearby residences or
8 natural surroundings, the developer has investigated the possibility of
9 using sound reduction technology on appropriate turbines.
- 10 (c) Natural and biological resources guidelines: (1) The developer
11 has considered the biological setting early in the project evaluation and
12 planning process, and has used biological and environmental experts to
13 conduct preliminary reconnaissance of the prospective site area. The de-
14 veloper has also communicated with wildlife agency and university per-
15 sonnel. The developer recognizes that if a site has a large potential for
16 biological or environmental conflicts, or both it may not be worth the
17 time and cost of conducting detailed wind resource evaluation work;
- 18 (2) the developer has contacted appropriate resource management
19 agencies early in the planning process to determine if there are any re-
20 sources of special concern in the area under consideration;
- 21 (3) the developer has involved local environmental/natural resources
22 groups as soon as practicable as these groups will be less likely to react
23 negatively to a project if they understand its requirements and see their
24 concerns are being seriously addressed;
- 25 (4) the developer recognizes that a key tool for avoiding unnecessary
26 negative ecological impacts of wind power development is planning and
27 has conducted landscape-level examinations of key wildlife habitats, mi-
28 gration corridors, staging/concentration areas, and breeding and brood-
29 rearing areas to develop general siting strategies;
- 30 (5) legally protected wildlife, such as threatened and endangered spe-
31 cies, present or potentially present at a site should receive careful review.
32 The developer recognizes that other seriously declining or vulnerable spe-
33 cies that have no legal protection may also be present, and has researched
34 wildlife issues at each site and attempted to understand how a wind en-
35 ergy project might impact individual species of concern;
- 36 (6) sites where native vegetation is scarce or absent will have sub-
37 stantially fewer biological resource concerns, and the developer should
38 where possible, avoid large, intact areas of native vegetation;
- 39 (7) the developer should bury power lines when feasible. In regions
40 where grassland burning is practiced, infrastructure should be able to
41 withstand periodic burning of vegetation. Roads and fences should be
42 minimized;
- 43 (8) the developer should not allow perches on the nacelles of tur-

1 bines. Towers should not utilize lattice-type construction or other designs
2 that provide perches for avian predators. The developer has addressed
3 potential adverse affects of turbine warning lights on migrating birds;
4 (9) the developer should situate turbines in a way that does not in-
5 terfere with important wildlife movement corridors and staging areas;
6 (10) when it is possible to avoid significant ecological damage in the
7 siting of a wind power generation facility, the developer has considered
8 mitigation for habitat loss. Appropriate actions may include ecological
9 restoration, long-term management agreements, and conservation ease-
10 ments to enhance or protect sites with similar or higher ecological quality
11 to that of the developed site; and
12 (11) the developer has considered potential cumulative regional im-
13 pacts from multiple wind energy projects when making environmental
14 assessments and mitigation decisions because failure to consider multiple
15 projects will prevent analysis at a scale that could potentially yield a much
16 different picture.

17 (d) Visual impact guidelines:

18 (1) The visual impact of wind power projects is an important consid-
19 eration in siting deliberations. The developer has evaluated fully the im-
20 pact on the quality of the surrounding landscape and viewsheds, especially
21 in areas with high aesthetic qualities and where affected landowners'
22 property may be impacted by the siting. Accurate visual representations
23 of potential projects (including visual simulations and viewshed analyses)
24 are useful ways of providing information to affected landowners, the gen-
25 eral public and agencies regarding the visual impact of wind power
26 projects;

27 (2) the developer has listened to the communities and affected land-
28 owners in all project phases;

29 (3) the developer has considered adapting the project design to min-
30 imize visual exposure from visually sensitive areas;

31 (4) the developer has planned the project to minimize the need for
32 developed roads or cut-and-fill;

33 (5) the developer has considered the possibilities and benefits of us-
34 ing roadless project designs or designs that rely on existing roads; and

35 (6) the developer has identified designated scenic byways and pop-
36 ular vistas, and avoided sites that are readily visible from those points.

37 (e) Soil erosion and water quality:

38 (1) Wherever possible, the developer has avoided sites that require
39 construction activities on steep slopes;

40 (2) in considering the appropriate erosion control measures required
41 for a specific site, the developer is aware that although some measures
42 may require greater expense initially, significant savings will occur over
43 the life of the project in reduced maintenance and replacement costs,

- 1 and a well-developed erosion and sediment control plan may also reduce
2 regulatory delays in approving and monitoring the project;
- 3 (3) the developer recognizes that construction and maintenance
4 should be done when the ground is frozen or when soils are dry and the
5 native vegetation is dormant;
- 6 (4) the developer recognizes that improved roads and construction
7 staging areas should be kept to a minimum, and care should be given to
8 avoid sensitive habitats;
- 9 (5) the developer recognizes that ongoing operation and maintenance
10 activities should be carried out as practical by use of light conveyances to
11 minimize habitat disturbance and the need for improved roads; and
- 12 (6) the developer recognizes that native vegetation of local highest
13 should be used when reseeding disturbed areas, and that wildlife and
14 plant composition should be considered in determining the frequency
15 and timing of mowing near turbines.
- 16 (f) Safety guidelines: The developer has included the need for safety
17 setbacks when evaluating specific parcels for development, and recog-
18 nizes that sufficient spacing from public access ways, and particularly from
19 residential areas and structures can mitigate many siting issues.
- 20 (g) Cultural, archaeological and paleontological guidelines:
- 21 (1) The developer has avoided selecting sites with potentially sensi-
22 tive cultural or historical resources whenever possible, and always involve
23 affected landowners early on;
- 24 (2) the developer has consulted with the Kansas state historical so-
25 ciety and qualified professional specialists familiar with cultural and fossil
26 resources in the project development area;
- 27 (3) the developer recognizes that some sensitive resources and sites
28 may be confidential to Native Americans, and has respected this confi-
29 dentiality and plans to work closely with tribal representatives to avoid
30 disruption of these resources;
- 31 (4) the developer has designed project site layouts to avoid sensitive
32 resources if possible;
- 33 (5) the developer has provided for monitoring and mitigation for pro-
34 tection of sensitive resources during construction and operation of the
35 project; and
- 36 (6) the developer has allowed adequate time in the project schedule
37 for data and specimen recovery, mapping analysis and reporting.
- 38 (h) Socioeconomic, public service and infrastructure guidelines:
- 39 (1) The developer has consulted with the local agencies and service
40 districts to determine if and how the project's requirements may affect
41 community services, costs and infrastructure;
- 42 (2) if possible, the developer has planned the project's operation and
43 construction to avoid or minimize potential impacts on community serv-

1 ices and infrastructure;

2 (3) the developer recognizes that the Kansas personal property tax
3 exemption available to renewable energy projects affects the local com-
4 munity. Developers are encouraged to incorporate community and good-
5 will initiatives into the project's economic plan and work to be good
6 neighbors;

7 (4) the developer has not exploited the fact that some districts or
8 counties do not yet have an established zoning permitting process appli-
9 cable to wind energy projects, and has worked with the appropriate local
10 officials to establish reasonable parameters and made the process as trans-
11 parent and informative to the public as practicable;

12 (5) the developer has provided information related to possible future
13 project expansions. Affected landowners should recognize that developers
14 may not have precise information about future expansions, and the de-
15 veloper recognizes that affected landowner issues and concerns may be
16 dependent on project scale, and that expanded projects may involve im-
17 pacts not specifically addressed during the initial project;

18 (6) the developer has anticipated and made provisions for future site
19 decommissioning and restoration;

20 (7) the developer will utilize local contractors and providers for serv-
21 ices, supplies, and equipment as much as possible during construction
22 and operation of the project; and

23 (8) the developer recognizes that the local community may not have
24 a specific need for the electricity generated by the proposed project, and
25 that there should be substantive public benefits beyond the greater good
26 of hosting a renewable energy facility.

27 (i) Public interaction guidelines:

28 (1) The developer has prepared and will implement a public outreach
29 program on the benefits and trade-offs involved in wind generation; and

30 (2) the developer has provided access or direction to objective back-
31 ground resources that will allow the interested parties to make fully in-
32 formed decisions. Decision making by developers, affected landowners,
33 elected officials and the general public will be enhanced when accurate
34 and comprehensive information is shared and ample opportunity for two-
35 way communication is available. Public involvement through meetings
36 and public forums should be incorporated into the siting process.

37 New Sec. 5. Sections 1 through 4, and amendments thereto, shall
38 only apply to counties which have not adopted zoning and planning reg-
39 ulations pursuant to article 7 of chapter 12 of the Kansas Statutes An-
40 notated or article 29 of chapter 19 of the Kansas Statutes Annotated, and
41 amendments thereto.

42 Sec. 6. K.S.A. 2006 Supp. 19-101a is hereby amended to read as
43 follows: 19-101a. (a) The board of county commissioners may transact all

- 1 county business and perform all powers of local legislation and adminis-
2 tration it deems appropriate, subject only to the following limitations,
3 restrictions or prohibitions:
- 4 (1) Counties shall be subject to all acts of the legislature which apply
5 uniformly to all counties.
- 6 (2) Counties may not affect the courts located therein.
- 7 (3) Counties shall be subject to acts of the legislature prescribing
8 limits of indebtedness.
- 9 (4) In the exercise of powers of local legislation and administration
10 authorized under provisions of this section, the home rule power con-
11 ferred on cities to determine their local affairs and government shall not
12 be superseded or impaired without the consent of the governing body of
13 each city within a county which may be affected.
- 14 (5) Counties may not legislate on social welfare administered under
15 state law enacted pursuant to or in conformity with public law No. 271—
16 74th congress, or amendments thereof.
- 17 (6) Counties shall be subject to all acts of the legislature concerning
18 elections, election commissioners and officers and their duties as such
19 officers and the election of county officers.
- 20 (7) Counties shall be subject to the limitations and prohibitions im-
21 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
22 prescribing limitations upon the levy of retailers' sales taxes by counties.
- 23 (8) Counties may not exempt from or effect changes in statutes made
24 nonuniform in application solely by reason of authorizing exceptions for
25 counties having adopted a charter for county government.
- 26 (9) No county may levy ad valorem taxes under the authority of this
27 section upon real property located within any redevelopment project area
28 established under the authority of K.S.A. 12-1772, and amendments
29 thereto, unless the resolution authorizing the same specifically authorized
30 a portion of the proceeds of such levy to be used to pay the principal of
31 and interest upon bonds issued by a city under the authority of K.S.A.
32 12-1774, and amendments thereto.
- 33 (10) Counties shall have no power under this section to exempt from
34 any statute authorizing or requiring the levy of taxes and providing sub-
35 stitute and additional provisions on the same subject, unless the resolution
36 authorizing the same specifically provides for a portion of the proceeds
37 of such levy to be used to pay a portion of the principal and interest on
38 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
39 ments thereto.
- 40 (11) Counties may not exempt from or effect changes in the provi-
41 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.
- 42 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101
43 through 12-1,109, and amendments thereto, counties may not levy and

- 1 collect taxes on incomes from whatever source derived.
- 2 (13) Counties may not exempt from or effect changes in K.S.A. 19-
3 430, and amendments thereto.
- 4 (14) Counties may not exempt from or effect changes in K.S.A. 19-
5 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.
- 6 (15) (A) Counties may not exempt from or effect changes in K.S.A.
7 13-13a26, and amendments thereto.
- 8 (B) This provision shall expire on June 30, 2006.
- 9 (16) (A) Counties may not exempt from or effect changes in K.S.A.
10 71-301a, and amendments thereto.
- 11 (B) This provision shall expire on June 30, 2006.
- 12 (17) Counties may not exempt from or effect changes in K.S.A. 19-
13 15,139, 19-15,140 and 19-15,141, and amendments thereto.
- 14 (18) Counties may not exempt from or effect changes in the provi-
15 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
16 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
17 through 12-1270 and 12-1276, and amendments thereto.
- 18 (19) Counties may not exempt from or effect changes in the provi-
19 sions of K.S.A. 19-211, and amendments thereto.
- 20 (20) Counties may not exempt from or effect changes in the provi-
21 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- 22 (21) Counties may not regulate the production or drilling of any oil
23 or gas well in any manner which would result in the duplication of reg-
24 ulation by the state corporation commission and the Kansas department
25 of health and environment pursuant to chapter 55 and chapter 65 of the
26 Kansas Statutes Annotated, and amendments thereto, and any rules and
27 regulations adopted pursuant thereto. Counties may not require any li-
28 cense or permit for the drilling or production of oil and gas wells. Counties
29 may not impose any fee or charge for the drilling or production of any
30 oil or gas well.
- 31 (22) Counties may not exempt from or effect changes in K.S.A. 79-
32 41a04, and amendments thereto.
- 33 (23) Counties may not exempt from or effect changes in K.S.A. 79-
34 1611, and amendments thereto.
- 35 (24) Counties may not exempt from or effect changes in K.S.A. 79-
36 1494, and amendments thereto.
- 37 (25) Counties may not exempt from or effect changes in subsection
38 (b) of K.S.A. 19-202, and amendments thereto.
- 39 (26) Counties may not exempt from or effect changes in subsection
40 (b) of K.S.A. 19-204, and amendments thereto.
- 41 (27) Counties may not levy or impose an excise, severance or any
42 other tax in the nature of an excise tax upon the physical severance and
43 production of any mineral or other material from the earth or water.

- 1 (28) Counties may not exempt from or effect changes in K.S.A. 79-
2 2017 or 79-2101, and amendments thereto.
- 3 (29) Counties may not exempt from or effect changes in K.S.A. 2-
4 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
5 1,178 through 65-1,199, and amendments thereto.
- 6 (30) Counties may not exempt from or effect changes in K.S.A. 2006
7 Supp. 80-121, and amendments thereto.
- 8 (31) Counties may not exempt from or effect changes in K.S.A. 19-
9 228, and amendments thereto.
- 10 (32) Counties may not exempt from or effect changes in the wireless
11 enhanced 911 act, *in the VoIP enhanced 911 act* or in the provisions of
12 K.S.A. 12-5301 through 12-5308, and amendments thereto.
- 13 (33) Counties may not exempt from or effect changes in K.S.A. 2006
14 Supp. 26-601, and amendments thereto.
- 15 (34) (A) From and after November 15, 2005, counties may not ex-
16 empt from or effect changes in the Kansas liquor control act except as
17 provided by paragraph (B).
- 18 (B) From and after November 15, 2005, counties may adopt resolu-
19 tions which are not in conflict with the Kansas liquor control act.
- 20 (35) (A) From and after November 15, 2005, counties may not ex-
21 empt from or effect changes in the Kansas cereal malt beverage act except
22 as provided by paragraph (B).
- 23 (B) From and after November 15, 2005, counties may adopt resolu-
24 tions which are not in conflict with the Kansas cereal malt beverage act.
- 25 (36) *Counties may neither exempt from nor effect changes to the em-*
26 *inent domain procedure act.*
- 27 (37) *Counties may not exempt from or effect changes in the provisions*
28 *of sections 1 through 5, and amendments thereto.*
- 29 (b) Counties shall apply the powers of local legislation granted in
30 subsection (a) by resolution of the board of county commissioners. If no
31 statutory authority exists for such local legislation other than that set forth
32 in subsection (a) and the local legislation proposed under the authority
33 of such subsection is not contrary to any act of the legislature, such local
34 legislation shall become effective upon passage of a resolution of the
35 board and publication in the official county newspaper. If the legislation
36 proposed by the board under authority of subsection (a) is contrary to an
37 act of the legislature which is applicable to the particular county but not
38 uniformly applicable to all counties, such legislation shall become effec-
39 tive by passage of a charter resolution in the manner provided in K.S.A.
40 19-101b, and amendments thereto.
- 41 (c) Any resolution adopted by a county which conflicts with the re-
42 strictions in subsection (a) is null and void.
- 43 Sec. 7. K.S.A. 2006 Supp. 19-101a and 19-1011 and K.S.A. 2005

1 Supp. 19-101a, as amended by section 4 of chapter 192 of the 2006 Ses-
2 sion Laws of Kansas are hereby repealed.
3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.