

SENATE BILL No. 383

By Committee on Utilities

1-24

1 AN ACT concerning energy; relating to wind and solar electric generation
2 facilities; establishing the Kansas property value protection act;
3 providing for compensation to nonparticipating landowners for
4 diminution in real property value under certain conditions.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) This section shall be known and may be cited as the
8 Kansas property value protection act.

9 (b) The purpose of this section is to protect nonparticipating
10 landowners from diminution of value of their real property from noise and
11 light pollution, negative impacts on aesthetics, visual landscape, natural
12 resources and rural environment and loss of quiet enjoyment caused by the
13 nearby development and operation of wind farms and solar farms. The
14 legislature finds that compensation for loss in property value to
15 nonparticipating landowners who wish to sell their qualifying property is
16 fair and appropriate.

17 (c) As used in this section:

18 (1) "Base value" means either:

19 (A) The fair market value, as of January 1 of the year in which
20 construction of the facility commenced and with an extraordinary
21 assumption that the facility is not being developed and does not exist, of
22 qualifying property owned by a nonparticipating landowner as established
23 by an independent appraiser who holds a credential issued by the Kansas
24 real estate appraisal board pursuant to the state certified and licensed real
25 property appraisers act; or

26 (B) the fair market value, as of January 1 of the year immediately
27 preceding the year in which development of the facility is first announced,
28 of qualifying property owned by a nonparticipating landowner as
29 established by the county's appraisal for such tax year as indicated in the
30 records of the county appraiser's office. For purposes of this subparagraph,
31 the county's appraised value of qualifying property is the fair market value,
32 except when the qualifying property is land devoted to agricultural use, the
33 county's indicated market value for such land is the fair market value. The
34 nonparticipating landowner shall elect whether the value of subparagraph
35 (A) or (B) shall be used as the base value for purposes of this section.

36 (2) "Developer" means any person, firm, partnership, corporation,

1 limited liability corporation, association, cooperative corporation or other
2 entity desiring to construct all or any portion of a facility and holding by
3 deed, lease, easement or otherwise the real property rights necessary for
4 construction of a facility. "Developer" includes any of the persons or
5 entities that hold record title to the real property rights used or intended to
6 be used for a facility.

7 (3) "Facility" means an electric generation facility utilizing wind or
8 solar resources or technologies consisting of one or more wind turbines or
9 solar energy devices or panels and any accessory structures and buildings,
10 including substations, meteorological towers, electrical infrastructure,
11 transmission lines and other appurtenant structures located within the
12 boundaries of land where a developer constructs or plans to construct all or
13 a portion of such electric generation facility.

14 (4) "Fair market value" means the amount in terms of money that a
15 well-informed buyer is justified in paying and a well-informed seller is
16 justified in accepting for property in an open and competitive market,
17 assuming that the parties are acting without undue compulsion.

18 (5) "Nonparticipating landowner" means any landowner who:

19 (A) Owns qualifying property;

20 (B) owned such qualifying property continuously prior to and at the
21 time of commencement of construction of the facility; and

22 (C) did not enter into a contract, lease, easement or other agreement
23 for any part of such qualifying property to be used for the facility.
24 "Nonparticipating landowner" includes any heir who inherits a qualifying
25 property from a deceased landowner who satisfied the requirements
26 described in this paragraph.

27 (6) "Qualifying property" means real property that is located within
28 two miles of any wind turbine or solar energy device or panel operated by
29 the facility measured from the farthest reach of turbine blades or solar
30 energy devices or panels to the property and is not subject to any lease,
31 easement or other agreement related to the development or operation of the
32 facility.

33 (7) "Sale price" means the price paid for qualifying property in an
34 arm's length transaction between unrelated parties acting without undue
35 compulsion in an open and competitive market.

36 (d) (1) If a nonparticipating landowner sells qualifying property in an
37 arm's length transaction to an unrelated party in an open and competitive
38 market where the parties are acting without undue compulsion, the
39 developer, owner or operator of the facility shall pay compensation to the
40 nonparticipating landowner in an amount equal to the base value of the
41 qualifying property adjusted annually by the percent change in statewide
42 appraised valuation of existing residential real property from the base
43 value year to the year of sale minus the sale price. If the sale price exceeds

1 the adjusted base value of the qualifying property, then no compensation
2 shall be due pursuant to this section.

3 (2) After the deed reflecting the sale of qualifying property has been
4 recorded with the register of deeds, the nonparticipating landowner who
5 sold such property shall provide notice of such sale to the developer,
6 owner and operator. Upon receipt of such notice, the developer, owner or
7 operator shall pay within 90 days the compensation required by this
8 section.

9 (3) A nonparticipating landowner shall only be compensated once per
10 qualifying property. Only one nonparticipating landowner per qualified
11 property shall be eligible for compensation under this section.

12 (4) To be eligible for compensation pursuant to this section:

13 (A) The qualifying property shall be in better condition than or in
14 substantially the same condition as it was during the time of the base value
15 appraisal, except for reasonable wear and tear; and

16 (B) the sale shall include the entire qualifying property as it was
17 described and appraised in the base value appraisal.

18 (5) Except as otherwise provided in this section for heirs, a
19 subsequent owner of a qualifying property shall not be eligible for
20 compensation pursuant to this section.

21 (6) For purposes of this section, each year the director of property
22 valuation shall calculate the annual percent change in statewide appraised
23 valuation of existing residential real property from ad valorem property tax
24 valuation data and publish a list of the annual adjustments on the division
25 of property valuation website.

26 (7) The developer, owner and operator of the facility shall jointly
27 designate one resident agent to receive appraisals, notices of sale and other
28 correspondence on their behalf from nonparticipating landowners and
29 others related to this section and shall provide notice of the name, address,
30 telephone number and email address of such agent to each
31 nonparticipating landowner and to the county clerk where qualifying
32 property is located.

33 (8) The nonparticipating landowner shall select a qualified appraiser
34 who shall perform the appraisal and provide a written appraisal report to
35 the nonparticipating landowner and resident agent of the developer, owner
36 and operator to establish an indication of the base value of the qualifying
37 property for purposes of this section. The appraisal report shall conform
38 with the uniform standards of professional appraisal practice (USPAP).
39 The developer, owner or operator shall pay for the appraisal and written
40 appraisal report within 30 days of receipt of a statement from the
41 nonparticipating landowner or the selected appraiser. The nonparticipating
42 landowner may elect to rely only on the county appraiser's records and not
43 select an appraiser pursuant to this paragraph.

1 (e) The developer, owner and operator of the facility shall have no
2 obligation under the provisions of this section with respect to a qualifying
3 property once all wind turbines or solar energy devices or panels within
4 two miles of the qualifying property have been fully removed, the land has
5 been restored and operations at the facility have been permanently
6 terminated.

7 (f) This section does not preclude any other remedy available under
8 the law.

9 (g) Any party may bring an action in the district court of any county
10 where the qualifying property or facility is located to enforce the
11 provisions of this section. The nonparticipating landowner shall be allowed
12 reasonable attorney fees and costs except upon a finding that the claim was
13 frivolous or without a reasonable basis in fact or law.

14 (h) A nonparticipating landowner may waive or agree to forego rights
15 or benefits under this section.

16 Sec. 2. This act shall take effect and be in force from and after its
17 publication in the Kansas register.