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MEMORANDUM

To: Chairman Thompson and Members of the Committee on Utilities

From: Office of Revisor of Statutes

Date: March 22, 2021

RE: Senate Bill 279

SB 279 would require a developer of a wind generation facility to enter into a facility agreement, comply with certain setback requirements, and have an application approved by the board of county commissioners where the proposed project was located. Under the bill:

> "**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 generating facility.

Under the bill, the setback distance from the nearest wind turbine of the facility would have to be at least:

(1) 7,920 feet from any residential property or public building,

(2) 15,840 feet from any airport, federal wildlife refuge, public hunting area or public park; and

(3) 5,280 feet from any property line of a nonparticipating property.

In addition to any requirements imposed by the board of county commissioners, the project would be approved if:

(1) The application submitted to the board complied with the following:

- The developer submitted an application to the board that included the name, address and telephone number of the applicant and the applicant's contact person for the construction of the facility;
- a detailed site plan for the facility, proposed locations for turbines and any accessory structures and buildings and compliance with the setback distances; and
- a certification that the developer had entered into a facility agreement with the landowner;

(2) The applicant demonstrates that all setback distances will be satisfied;

(3) The applicant demonstrates that each turbine of the facility will be equipped with navigational lights;
(4) The applicant provides written notice to all owners of any property located within any setback distances provided in subsection and publishes such notice in the official newspaper of the county;
(5) A sound study is conducted to ensure that any industrial wind turbine that is installed does not generate noise levels that exceed 40 decibels;
(6) The wind turbine density of the project does not exceed one turbine per square mile; and
(7) For any proposed facility that includes industrial wind turbines:

- An assessment that identifies the astronomical maximum and anticipated hours per year of shadow flicker expected to be perceived at each residence, educational facility, workplace, healthcare setting, outdoor or indoor public gathering area, other occupied building and roadway within a minimum of one mile of any turbine;
- a description of the planned setbacks;
- an assessment of the risks of ice throw, blade shear and tower collapse;
- a description of the lightning protection system planned for the proposed facility;
- a description of the Federal Aviation Administration's lighting, turbine color and other requirements for the wind turbines;
- a decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in wind generation projects and cost estimates;
- a plan for fire protection for the proposed facility that is prepared by or in consultation with a fire safety expert; and
- an assessment of the risks that determines whether the proposed facility will interfere with the weather radars used for severe storm warning or any local weather radars.

Subsection (c) of section 3 describes the technical requirements for a sound study to be conducted as part of an application. When an application is filed, the board of county commissioners would be required to hold a public hearing on the application at least 20 days, but not more than 90 days, after the publication of such notice. The board would deny the application if the board found that the developer failed to comply with any of the requirements of Section 3.

Section 4 of the bill describes the requirements for the facility agreement that a developer must enter into with a landowner prior to making an application. The developer would be required to:

(1) Obtain and provide proof to the landowner that the developer had secured financial assurance in amounts adequate for the project;
(2) account for the estimated cost of removing the facilities from the landowner's property and to restore the property;
(3) maintain the required amount of financial assurance that is required by this section.

Facility agreements involving a wind easement or lease would be required to be:

(1) Delivered to the landowner with a completed cover page in at least 16-point type font containing specific language.

(2) held at least 10 business days after the first proposed easement or lease has been delivered to the property owner before it may be executed by the parties;

(3) free from any nondisclosure agreement for any negotiations or the terms of any proposed lease or easement, except for a mutual confidentiality agreement in the final executed lease or easement; and

(4) executed in a manner that:

- Preserves the right of the landowner to continue conducting business operations as currently conducted for the term of the agreement;
- does not make the landowner liable for any property tax associated with the facility or other equipment related to wind energy generation;
- does not make the landowner liable for any damages caused by the facility and equipment or the operation of such facility, including liability or damage to the landowner or to third parties;
- obligates the developer, owner and operator of the facility to comply with federal and state law and local ordinances and does not make the landowner liable in the case of a violation;
- allows the landowner to terminate the facility agreement if the facility has not operated for a period of at least three years, unless the property owner receives the normal minimum lease payments that would have occurred if the facility had been operating;
- clearly states any circumstances that will allow the developer of the facility to withhold payments from the property owner; and
- states that the owner of the facility shall carry general liability insurance.

Section 5 of the bill amends K.S.A. 58-2272 concerning leases or easements involving wind resources for the generation of electricity. Such leases or easements will be:

(1) Void if, within five years after the easement commences, the property that is the subject of the lease or easement does not have a:

- Certificate of site compatibility or conditional use permit issued; and
- transmission interconnection request that is in process and not under suspension; and

(2) presumed to be abandoned if a period of 36 consecutive months has passed with no construction or operation of the facility. If the developer does not file a plan with the board of county commissioners of the county in which the property is located outlining the steps and schedule for continuing construction of the facility within the 36-month period, the landowner may provide the developer with a 60-day written notice of the intent to terminate the easement. If the developer fails to provide a written objection to the notice, the landowner may file a notice of termination with the register of deeds in the county in which the real property is located which shall become effective when the notice of termination is recorded.