

Proponent Testimony for Senate Bill 279

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I am a citizen of Seneca, Kansas in support of SB 279. While there are a number of issues involving the approval and development of the Soldier Creek wind farm in Nemaha County that I would like to make you aware of, I am focusing my testimony today on why the bill is so important overall and on two specific pieces of the legislation – decommissioning and property line setbacks.

I would like to stress the importance of having the state legislature address wind development. It all boils down to money and power. You have huge corporations with deep pockets coming to small, rural communities that are run by hard-working, friendly, trusting citizens that have been elected by their friends and neighbors. Even our local county and city attorneys do not have the skillset, experience, and foresight to contend with the wind industry's specialist attorneys. Nemaha County commissioners were so trusting, in fact, that they agreed to rescind Resolution 2012-8 (which established setbacks meant to protect non-participating landowners) by request of NextEra. They thought they were doing something harmless by allowing a small, 40-turbine wind farm in the sparsely populated extreme southeast corner of the county. Little did they know that the conditional use permit they approved did not limit NextEra to 40 turbines or to the small area of the county that was initially mapped out as part of the permit. In fact, the project grew to 120 wind turbines that covered more heavily populated areas of the county and garnered great opposition. This is just one example of how ill-equipped and unprepared our local governments are in contending with these highly strategic corporate giants. In addition to this, many of our rural counties and cities in Kansas are un-zoned, which is a target for the wind industry. Even if they want to enact planning and zoning to protect themselves, it is cost prohibitive for many struggling local governments. Beyond that, if a wind developer is interested and watching, the local government cannot risk even a single misstep in the process.

Our rural Kansas county commissioners and city council members are not used to dealing with corporate attorneys watching their every move, and are intimidated by the frequent threat of litigation. One of these corporate attorneys is Polsinelli's Alan Claus Anderson who represents NextEra and Invenergy. In 2019, Mr. Anderson testified on Kansas HB 2773 in which he strategically argued that the bill was taking control away from local governments and that "nothing is more local than land use decisions." Ironically, it was Mr. Anderson's scrutiny of the tiny town's planning and zoning process that eventually led to the City of Corning abandoning their planning and zoning, which was the city's ONLY way to protect the use of the surrounding land against industrial wind development encroaching on their city. On multiple occasions, Nemaha County commissioners and various city councils indicated that they "couldn't do anything to stop" NextEra, even though the majority of the citizens were in opposition to the wind farms. They felt the risk and threats of legislation by NextEra, even if unfounded, would be too costly to fight. After all, the legal fees for a lengthy court battle could bankrupt a small community rather quickly. NextEra and other players in the wind industry understand this and use it as part of their strategy. That is one of many reasons why SB 279 is so crucial!

Decommissioning is a major issue with wind developments in Kansas and around the country. Even though most of the county agreements have a decommissioning plan and some type of funding in place, it is not nearly enough. It is important to include this in the bill so that both the participating landowner and the county are protected. Nemaha County's Soldier Creek project has a decommissioning agreement in which the decommissioning amount was to be determined by a third-party engineer. However, in that engineer's report, the so-called third-party engineer "*relied on information provided by NextEra... and did not verify the information provided.*" The wind industry consistently overstates the salvage value of the turbines (which are very costly to disassemble and transport in order to salvage) and understates the overall cost of decommissioning. SB 279 sets forth some minimum and specific methods to compute decommissioning amounts, and does not allow salvage value (which can be very objective and volatile) as part of the computation. This provides some protection for the local governments, and it incentivizes the wind developer to decommission the project themselves in order to benefit from salvaging the equipment.

Property line setbacks were another major issue in Nemaha County's Soldier Creek development. The property line setbacks were alarmingly short (600 feet) and the county came up empty when it came to negotiating anything longer. These setbacks severely infringe on the property rights of neighboring non-participating landowners. They lose the ability to build a future residence anywhere near the property line, and in fact they are in the wind industry's "hard hat zone" when within 1500 feet of the turbine, which could encompass up to 900 feet of their own property. The wind developers will argue in favor of leased landowners' land rights until they are blue in the face, but what about the land rights of these non-participant neighbors? Again, SB 279 is essential in providing these protections.

In summary, our small rural Kansas communities are no match for the wind industry and their lobbyists, deep pockets, and the intimidation and threats of corporate attorneys. I urge you to provide support for our local elected officials through SB 279.