

Senate Utilities Committee
Regarding SB 455: The Industrial Wind Turbine Development Act
Testimony of the Kansas Wind Coalition
Presented by Ron Gaches
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Thank you Chairman Clark and members of the Committee for this opportunity to appear on behalf of the Kansas Wind Coalition and express our concerns about the passage of SB 455 or a moratorium on wind development in Kansas. For the purpose of today's discussion, I'd like to cover the following points:

First: Why a moratorium on wind development is not needed at this time and would not be in the best interest of the State.

Second: Why Kansas public policy in support of wind development should be consistent with other Kansas natural resources.

Third: Why wind development should be a vital part of Kansas' future.

A two-year moratorium on wind development at this time will all but ensure that Kansas misses out on the economic opportunity associated with wind energy. Kansas should not impose a moratorium on wind development. Not for the Flint Hills or the entire state.

The Wind and Prairie Task Force of the State Energy Resources Coordinating Council is already charged with developing policies for use by counties in assessing potential wind development projects.

The Flint Hills are under no immediate threat of being overrun by wind energy projects. There are a number of projects being discussed, I've heard of perhaps a half dozen spread over the thousands of square miles of the Flint Hills, but the marketplace for wind energy, electric transmission constraints, and competition from more wind friendly states will prevent many of them from ever being built.

Moreover, the Flint Hills development issue is being fought over grounds that don't warrant state intervention. With all the attention that wind development has received in the past several months it would be very hard to argue that landowners no longer have access to adequate legal representation. Attorneys have surrounded this issue.

More importantly, opponents to wind energy are arguing they are entitled to a wind turbine free view. They are asking for protection of what's called a "viewscape."

You won't find protection of viewscape in our statute books. But it's being talked about like it's an inalienable property right. What it really is is a legal device to take away another person's property rights.

Pete Ferrell owns property in Butler County. His property rights extend to the minerals below and the air above. But there are limits to his rights. He can produce the minerals under the surface of his land, but not the minerals under the surface of his neighbor's land. He can buy the mineral rights that belong to his neighbor if both parties are in agreement. As to his rights above the surface, he has the legal right to construct on his land whatever structure is compatible with the county's zoning. Beyond that, the notion of a legal right to a viewscape ends at your own property line. If Mr. Ferrell's neighbor hasn't paid for a viewscape, it's not his.

There are a very few exceptions to the general rule about viewscape. For example, the State of Kansas has limited the height of development around the Statehouse. But that doesn't prevent a private landowner from constructing a building that everyone else considers unsightly, even ugly. Even across the street from the Statehouse.

Beauty is in the eye of the beholder. And the legal rights to a viewscape are held by the landowner on whose land the item is constructed.

Proponents of SB 455 and various moratorium proposals would leave you to believe that wind energy is benefiting from unique and unjustified development incentives. Actually, compared to the incentives in place for other natural resource production in Kansas, wind power is being treated similarly

Consider first oil and gas production. We currently impose property taxes and severance taxes on oil and gas production. But when these industries were in their infancy such taxes didn't exist.

In fact, we produced oil and gas in Kansas for nearly a century before we imposed a severance tax in the early 80's. Even today we provide low volume oil wells exemptions to the severance tax. And we offer additional tax credits and exemptions to the oil and gas industry.

We have gone so far as to create a public policy against waste of our mineral resources. In fact, I read with interest in this month's KIOGA newsletter that Murfin Drilling is receiving part of a \$4.4 million federal grant for an enhanced oil recovery project. Oil and gas development, just like wind energy development, is driven by government subsidies and incentives. We do so because we want to encourage the development of the resource and because royalty and production ownership has become an important source of income for many Kansans.

Consider also the indirect cost to the State of oil and gas production. Production of fossil fuels negatively impacts the environment. There are oil spills. There are gas leaks. There is damage to the environment and the habitat of birds, fish and other game. There is contamination of ground water. In January of 2001 there were two deaths in Hutchinson associated with the storage of natural gas.

No one disputes these problems. Landowners and production companies, their neighbors and the State of Kansas have learned to deal with these problems. We have the Oil and Gas Conservation Division and numerous departments of KDHE dedicated to dealing with these problems. There are costs associated with the development of fossil fuels and we accept them because of the benefits.

When opponents to wind energy raise environmental concerns as cause for not wanting development in the Flint Hills in makes me pause. Most of the environmental issues associated with oil and gas production are present in the Flint Hills. There are spills to clean up, surface water and underground water to protect, and abandoned wells to plug. I don't hear anyone calling for a moratorium on oil and gas development in the Flint Hills. Nor should we.

Let's look also at production agriculture, the most important natural resource industry in our state.

In Kansas, farm machinery and equipment is 100% property tax exempt for the life of the property. Livestock inventories are also 100% property tax exempt. Exactly the exemption provided wind energy by this legislature just a few years ago.

Agriculture tax exemptions also play a direct role in state energy policy. The market viability of ethanol and bio-diesel products is directly benefited by the tax-exempt status of the agricultural inputs. And preferential motor fuels tax rates at the federal and state level allow these products to be price competitive in the marketplace.

Within federal and state policy there are numerous incentives and protections that are all designed to encourage and maintain a strong agriculture base in our state. All of those policies are well intended and the Wind Coalition has no objection to them.

They are also very similar in intent to the property tax exemption for wind energy. And, if you accept that wind development will always occur on some kind of farming or ranching land, the exemption for wind power encourages lease income for farming and ranching families. Without the Kansas incentives for wind energy, wind development will occur in other states and the lease income for Kansas families will be lost. In that respect, the property tax exemption for wind energy brings additional income to rural Kansas.

Now that wind energy is being discussed in the Flint Hills we are wringing our hands over the prairie chicken population. Like many of you, I grew up in Kansas hunting prairie chicken, pheasant, quail and dove with my dad. I think everyone agrees that increases in production agriculture, including grazing of the Flint Hills, and oil and gas production, have impacted bird habitat. But I don't see us eliminating the tax abatements available to production agriculture or ordering an agriculture moratorium in order to promote hunting or agri-tourism.

The attractiveness of wind energy as a vital component of our national and state energy policy is without dispute. Wind power is the most environmentally friendly source of electricity generation available today. It is so attractive as an alternative to other energy sources that the federal government has created a tax credit to promote its use. The wind energy tax credit has universal support and will be renewed this year with passage of the Energy Bill currently before Congress.

The generation of electricity by wind is safe, environmentally friendly, renewable and, with incentives and tax abatements, is becoming the fastest growing source of energy in the United States

In addition, wind generation creates jobs. The development of wind generation sites creates hundreds of high-paying construction jobs in the short run and many well paying professional and support jobs in the long run.

There is within Kansas already a significant number of wind industry jobs. Developers, engineers, energy consultants, as well as the support staff at the FPL site outside of Montezuma.

Then there is the income for landowners. Wind development doesn't just occur. It is the product of market demand, consumer support, public policy encouragement, and negotiations with private landowners for the right to construct wind projects on their land.

Terms of wind leases are confidential between the developer and landowner, but it is not uncommon for each wind tower to generate substantial annual lease income to the landowner. In Kansas, as in other Midwest states, this is very attractive supplementary income for farming and ranching families.

We encourage the committee to give these issues a full hearing and then take the action that is most appropriate. Continue the tax abatement in support of wind energy. Provide input into the work of the Wind and Prairie Task Force. And protect the private property rights of those Kansas who see opportunity and a pollution free energy future in wind development.

Thank you for consideration of our comments.