

*Opponent Testimony Provided to the  
Senate Utilities Committee  
March 23, 2021  
Mr. Patrick Hoffman, Attorney At Law*

**In Opposition to Senate Bill 279**

Good afternoon Mister Chairman, Vice-Chair and Ranking Member,

My name is Patrick Hoffman, I am an attorney in Ellsworth, KS. Since I started practicing law in 2007, I have helped hundreds of landowners review and negotiate wind leases and easements. 99% of my wind farm work is representing landowners, and I have also worked for local governments to negotiate PILOT Agreements. My landowner clients are ag producers focused on preserving the value of their land and increasing its production.

HB 279 seems to me, first, as a huge taking of rights from the landowner. This is state-wide zoning on a level we do not see on any other type of property use. Kansas leaves zoning decisions to the county and local government for every other type of use and that system has worked well, from feedlots to wedding venues to even adult oriented businesses county government has the right to determine whether and where such business can be located, and that system has worked well. Kansas has some counties that have chosen not to have zoning regulations, leaving the maximum amount of personal authority with the landowner. We also have counties that have thoughtfully determined which portions of the county are best suited for wind development and zoned their county accordingly. This bill usurps the county governments right of determination in these matters and substitutes a stifling one-size-fits all zoning scheme without regarding for existing land use and local interests. County government is capable of determining which areas are well-suited for rural residential development and in what areas ag producers may choose to improve their operations by increased cash flow from renewable energy.

The zoning scheme enacted by this bill takes power away from ag producers in favor of residential users and allows non-residents to dictate the use of land over residents. Under this bill, a small holding landowner can void the wishes of the surrounding landowners by vetoing a project. Ag producers face increasing economic pressure and loss of land rights in favor of residential owners will only exaggerate that pressure. If feedlots, gas pipelines, liquor stores, and other less desirable land uses required a similar unanimous consent of the neighborhood there would not be many of those anywhere in Kansas.

This bill seems to assume that landowners need government assistance to protect their interests, but this has never been my experience. Landowners value their land rights because loss of rights because land is so crucial to agriculture. More than anything, landowners have hired me to review and explain the wind leases to them so they can thoroughly consider them, then they negotiate, with and without the assistance of attorneys, to get the best bargain. No wind developer can force a landowner to enter an agreement, and landowners use their

leverage to enter into contracts they approve. When a landowner signs a wind lease, they want that lease developed because they have decided the use of their land is improved by the wind project - the increased cash flow from the wind lease can be used to purchase equipment, make repairs, build fence, buy land, etc. This bill would rescind by government action contracts that have been negotiated and agreed to by landowners who want projects to be built on their land.

There is a provision in this bill limiting wind turbines to one per section of land - that is the opposite of what Kansas landowners want. Landowners want as many turbines on their property as the developer will put, because that maximizes revenue. I have never heard of any theory that would justify 1 per section.

This bill has some extreme rules on how far a turbine can be from other structures, far in excess of what I have ever seen negotiated or put into zoning regulations. I question the logic behind these extreme setbacks, while it is certainly possible for a wind tower to fall over (possible but to my knowledge has never happened in Kansas) I have never heard of a proposed scenario where it would be possible for a tower to fall further than its height. I have seen zoning requiring a setback of 110% of height but nothing like what is required by this bill.

Regarding noise - to my knowledge no one has successfully sued for a noise nuisance caused by a wind project in Kansas, to my knowledge no such suit has been filed. There is some noise in a wind project, but it is not near the noise that Union Pacific makes 3 times a day in downtown Ellsworth.

When I read this bill, I see government requirements on many issues that are standards to wind leases today. Back in 2007 a wind lease proposal might not have had a clean-up security provision, but those are common today. As an attorney, I continue to request different language to wind leases to reflect the updated uses and issues I see every day - but this bill will restrict my ability to negotiate for my clients' better lease language that will suite the evolving industry and technology.

Finally, this bill has huge impact on my clients how have an existing wind project built and paying them lease money. Those clients desperately want those projects to remain and be successful in the future. This bill would create huge confusion and issues for those projects going forward, creating a lot of uncertainty on whether they could repower or be forced to end. This would feel like taking money directly away from those landowners. Also, I have a lot of landowners who are happy with the leases they signed in the last few years and want those projects built. This bill shatters those projects and puts them back to square one or below.

In conclusion, if the Legislature intends to make wind energy development impossible in Kansas, simply pass a moratorium. This bill would create so much confusion as to do exactly that and stop my landowner clients from reaping the financial benefits from their wind, and end a significant source of economic development for rural Kansas.

Patrick Hoffman