

HOUSE BILL No. 2799

By Committee on Utilities

2-10

AN ACT imposing a moratorium on Flint Hills region wind turbine development; amending K.S.A. 2003 Supp. 19-101a and repealing the existing section.

WHEREAS, Historically, the residential, commercial and industrial development in the state of Kansas has been concentrated in areas in which the soils are most amenable to cultivation, and ranching activities have occupied those portions of the state in which the geological formations are less amenable to cultivation, leaving a region in the eastern half of the state approximately three counties wide known as the "Flint Hills region" largely untouched by nonagricultural commercial and industrial development; and

WHEREAS, The lack of substantial agricultural commercial and industrial development in the Flint Hills region causes the region to represent a valuable historical, cultural and economic resource of the state of Kansas a whole; and

WHEREAS, The lack of substantial nonagricultural commercial and industrial development in the Flint Hills region has permitted the preservation of a small section of the ecologically important North American tallgrass prairie and tallgrass prairie habitat; and

WHEREAS, The Flint Hills region of Kansas has significant potential for development consistent with preservation of its cultural, natural and historical values through use for agriculture and tourism; and

WHEREAS, The Flint Hills region of Kansas, together with other parts of the state, have been considered for development for utility scale wind turbine complexes which would significantly impact their surroundings and, in the Flint Hills region, its cultural, natural and historical value to the state of Kansas as a whole; and

WHEREAS, The Governor of the state of Kansas has appointed a task force to study and make recommendations with respect to the siting of wind turbine facilities within the Flint Hills, which is scheduled to make its recommendations no sooner than March _____, 2004; and

WHEREAS, The suspension of development of wind turbine facilities with the Flint Hills region of Kansas is appropriate and necessary, pending the legislature's opportunity to consider the recommendations of the

1 Governor's task force take such actions as it may determine are fitting to
2 preserve the Flint Hills in response to such recommendations: Now,
3 therefore,

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

6 New Section 1. (a) For the purposes of this section, "utility scale
7 wind turbine" means any device for the conversion of wind energy to
8 electrical energy with a total height from ground to the highest point of
9 the device in excess of 90 feet.

10 (b) From the effective date of this act until July 1, 2005:

11 (1) Within the following listed counties, all of which lie in whole or
12 in part within the Flint Hills region, no county may take any action to
13 permit or allow the change of land use restrictions with respect to any
14 parcel such that the development of the parcel with utility scale wind
15 turbines would be an unlawful land use nor issue any building permit or
16 other approval for the construction of any utility scale wind turbine or
17 facility designed to support any utility scale wind turbine: Butler county,
18 Chase county, Chautauqua county, Cowley county, Elk county, Geary
19 county, Greenwood county, Lyon county, Marion county, Morris County,
20 Pottawatomie county, Riley county and Wabaunsee county.

21 (2) Within the counties listed in paragraph (a)(i) no person or entity
22 shall commence construction of any utility scale wind turbine or any struc-
23 ture designed or intended primarily to support any utility scale wind tur-
24 bine or the construction of any utility scale wind turbine.

25 (c) Any activity in violation of subsection (b) shall be deemed to be a
26 public and private nuisance which may be enjoined by any land owner
27 within the county in which the violation takes place or by the county
28 attorney of such county in an action brought for such relief. The right to
29 seek such relief from a violation occurring prior to July 1, 2005, may be
30 brought at any time within two years of the violation and abatement shall
31 be the appropriate remedy. Any landowner who prevails in an action
32 authorized by this act shall be entitled to recover reasonable attorney fees
33 and costs of such action.

34 Sec. 2. K.S.A. 2003 Supp. 19-101a is hereby amended to read as
35 follows: 19-101a. (a) The board of county commissioners may transact all
36 county business and perform all powers of local legislation and adminis-
37 tration it deems appropriate, subject only to the following limitations,
38 restrictions or prohibitions:

39 (1) Counties shall be subject to all acts of the legislature which apply
40 uniformly to all counties.

41 (2) Counties may not consolidate or alter county boundaries.

42 (3) Counties may not affect the courts located therein.

43 (4) Counties shall be subject to acts of the legislature prescribing

1 limits of indebtedness.

2 (5) In the exercise of powers of local legislation and administration
3 authorized under provisions of this section, the home rule power con-
4 ferred on cities to determine their local affairs and government shall not
5 be superseded or impaired without the consent of the governing body of
6 each city within a county which may be affected.

7 (6) Counties may not legislate on social welfare administered under
8 state law enacted pursuant to or in conformity with public law No. 271—
9 74th congress, or amendments thereof.

10 (7) Counties shall be subject to all acts of the legislature concerning
11 elections, election commissioners and officers and their duties as such
12 officers and the election of county officers.

13 (8) Counties shall be subject to the limitations and prohibitions im-
14 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
15 prescribing limitations upon the levy of retailers' sales taxes by counties.

16 (9) Counties may not exempt from or effect changes in statutes made
17 nonuniform in application solely by reason of authorizing exceptions for
18 counties having adopted a charter for county government.

19 (10) No county may levy ad valorem taxes under the authority of this
20 section upon real property located within any redevelopment project area
21 established under the authority of K.S.A. 12-1772, and amendments
22 thereto, unless the resolution authorizing the same specifically authorized
23 a portion of the proceeds of such levy to be used to pay the principal of
24 and interest upon bonds issued by a city under the authority of K.S.A.
25 12-1774, and amendments thereto.

26 (11) Counties shall have no power under this section to exempt from
27 any statute authorizing or requiring the levy of taxes and providing sub-
28 stitute and additional provisions on the same subject, unless the resolution
29 authorizing the same specifically provides for a portion of the proceeds
30 of such levy to be used to pay a portion of the principal and interest on
31 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
32 ments thereto.

33 (12) Counties may not exempt from or effect changes in the provi-
34 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

35 (13) Except as otherwise specifically authorized by K.S.A. 12-1,101
36 through 12-1,109, and amendments thereto, counties may not levy and
37 collect taxes on incomes from whatever source derived.

38 (14) Counties may not exempt from or effect changes in K.S.A. 19-
39 430, and amendments thereto.

40 (15) Counties may not exempt from or effect changes in K.S.A. 19-
41 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

42 (16) (A) Counties may not exempt from or effect changes in K.S.A.
43 13-13a26, and amendments thereto.

- 1 (B) This provision shall expire on June 30, 2005.
- 2 (17) (A) Counties may not exempt from or effect changes in K.S.A.
3 71-301a, and amendments thereto.
- 4 (B) This provision shall expire on June 30, 2005.
- 5 (18) Counties may not exempt from or effect changes in K.S.A. 19-
6 15,139, 19-15,140 and 19-15,141, and amendments thereto.
- 7 (19) Counties may not exempt from or effect changes in the provi-
8 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
9 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
10 through 12-1270 and 12-1276, and amendments thereto.
- 11 (20) Counties may not exempt from or effect changes in the provi-
12 sions of K.S.A. 19-211, and amendments thereto.
- 13 (21) Counties may not exempt from or effect changes in the provi-
14 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- 15 (22) Counties may not regulate the production or drilling of any oil
16 or gas well in any manner which would result in the duplication of reg-
17 ulation by the state corporation commission and the Kansas department
18 of health and environment pursuant to chapter 55 and chapter 65 of the
19 Kansas Statutes Annotated and any rules and regulations adopted pur-
20 suant thereto. Counties may not require any license or permit for the
21 drilling or production of oil and gas wells. Counties may not impose any
22 fee or charge for the drilling or production of any oil or gas well.
- 23 (23) Counties may not exempt from or effect changes in K.S.A. 79-
24 41a04, and amendments thereto.
- 25 (24) Counties may not exempt from or effect changes in K.S.A. 79-
26 1611, and amendments thereto.
- 27 (25) Counties may not exempt from or effect changes in K.S.A. 79-
28 1494, and amendments thereto.
- 29 (26) Counties may not exempt from or effect changes in subsection
30 (b) of K.S.A. 19-202, and amendments thereto.
- 31 (27) Counties may not exempt from or effect changes in subsection
32 (b) of K.S.A. 19-204, and amendments thereto.
- 33 (28) Counties may not levy or impose an excise, severance or any
34 other tax in the nature of an excise tax upon the physical severance and
35 production of any mineral or other material from the earth or water.
- 36 (29) Counties may not exempt from or effect changes in K.S.A. 79-
37 2017 or 79-2101, and amendments thereto.
- 38 (30) Counties may not exempt from or effect changes in K.S.A. 2-
39 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
40 1,178 through 65-1,199 or K.S.A. 2003 Supp. 17-5909, and amendments
41 thereto.
- 42 (31) Counties may not exempt from or effect changes in K.S.A. 2003
43 Supp. 80-121, and amendments thereto.

1 (32) Counties may not exempt from or effect changes in K.S.A. 19-
2 228, and amendments thereto.

3 (33) *Counties may not exempt from or effect changes in section 1, and*
4 *amendments thereto.*

5 (b) Counties shall apply the powers of local legislation granted in
6 subsection (a) by resolution of the board of county commissioners. If no
7 statutory authority exists for such local legislation other than that set forth
8 in subsection (a) and the local legislation proposed under the authority
9 of such subsection is not contrary to any act of the legislature, such local
10 legislation shall become effective upon passage of a resolution of the
11 board and publication in the official county newspaper. If the legislation
12 proposed by the board under authority of subsection (a) is contrary to an
13 act of the legislature which is applicable to the particular county but not
14 uniformly applicable to all counties, such legislation shall become effective
15 by passage of a charter resolution in the manner provided in K.S.A.
16 19-101b, and amendments thereto.

17 (c) Any resolution adopted by a county which conflicts with the re-
18 strictions in subsection (a) is null and void.

19 Sec. 3. K.S.A. 2003 Supp. 19-101a is hereby repealed.

20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the Kansas register.

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