

Submitted Testimony provided to the
Senate Utilities Committee
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Proponent Testimony on SB-279

I would like to thank you for the opportunity to share my experiences from the perspective of a county commissioner who has been involved in the process. This is a very broad topic and it is my intention to demonstrate the need for such legislation and other components to this legislation that should be included in these discussions. What I have read in the draft of SB-279 is a good start in “standardization” the process in developing vital resources in our fine state.

What I hope to accomplish is to emphasize the need for these developments to ultimately be valued for the purposes of property taxation at the state level. Kansas has offered generous incentives in the form of property tax exemptions for ten years that is commonly referred to as **Payment In Lieu Of Taxes**, or PILOT payments. In states where such incentives have not been extended, the valuation of such properties tends to become limited by the least effective property appraiser in that state. These “comparables” coupled with better known valuation challenges known as the effect of DARK STORE THEORY can be reasonably anticipated in the years ahead when the PILOT’s expire.

From my personal experience I can only recall a single commitment that expected to last beyond 30 years. Yet such agreements that the county enters into with a developer extend beyond this timeframe, perhaps twice as long. Often these agreements have fewer reviews than one would expect going on a blind date. Conversations on these agreements are muzzled by the nondisclosure agreements and cloaked as trade secrets. It is similar to receiving the prenuptial agreement during the wedding rehearsal. Fortunately my wife and I participated in premarital counseling and she continues to renew the lease, as she calls it.

With respect to the specifics of entering into the various agreements, it was decided that we would break this down to three evening meetings that were to be held each month, January, February and March. The January meeting was for the commission to learn the concerns of the public and introduce the developer. The February meeting was to provide the public greater access to the developer. The third meeting (March) was to have the developer explain the specifics to each of the agreements. For a number of reasons, the citizens had no access to the agreements which were signed on Friday, March 13th, 2020.

I had the pleasure of obtaining, reviewing and interviewing members of the communities where these developments had taken place. Most people tend to gravitate to the PILOT agreements but some who have gone through this process would indicate that it is the Road Use Agreement (RUA) that carries the greatest financial risk to the county. I often question why a small county in Kansas would consent to resolve matters arising from a road use agreement in Kansas to participate in hearings on the east coast.

What I find particularly interesting is the comparison of the “suite of documents” associated in these wind turbine energy developments. Each of these are “comparable” sized projects and were developed by the same attorney for a couple different developers. Some of these differences are attributed to developer contractual requirements. You may notice that the development in Bourbon County is about half of the size of Nemaha and Neosho. The portion of the Bourbon County project is shown, however , the total size of the project is 195 MW with generation in an adjacent county.

Also shown in the table is the contents of SB #279 and my view how this bill addresses each of these agreements. The strength of this bill is in addressing the decommissioning phase of the project that is a significant risk 30-60 years from now. There are often terms in the Contribution Agreement and/or Road Use agreements that currently limit any future claims for the decommissioning phase. From a county perspective, developing legislation that covers the minimum standards for Road Use Agreements should be incorporated into this bill. The Neosho and Bourbon County agreements lack the enforcement provisions articulated in the Nemaha Road Use Agreements during the construction phase of the project. The most informative resource on this topic is the County Engineer of Coffey County Kansas.

County	Neosho	Nemaha	Bourbon	
Name	Neosho Ridge	Soldier Creek	Jayhawk Wind	SB #279
Date	June 19, 2019	February 26, 2020	TBD - 3/3/2020?	
Capacity	300 MW	300 MW	Aproximately 146 MW	
Developer	APEX	NextEra	APEX	
Council	A.N.	A.N.	A.N.	
Contribution Agreement	7 Pages	7 Pages	8 Pages	No Guidance
PILOT - \$/MW	\$3,333	\$3,000	\$2,504	
Initial Payment	\$1,500,000	\$1,250,000	\$407,812.50	
Annual PILOT Years 1-9	\$1,000,000	\$900,000	\$365,625	
Other incentives	? \$100,000 Municipality	R&B, \$165k, RFD, 80k		
Development Agreement	5 Pages	12 Pages	4 Pages	Assume h = 550 ft.
Sound Restrictions N-Participant	48 dBA	50 dBA	50 dBA	40dBA (? distance)
Sound Restrictions Participant	50 dBA	55 dBA		
Setback - N-Participant Dwelling	1,640 ft.	* sited locations, variance limits	1,400 ft.	6,600 ft.
Setback - Participant Dwelling	1,225 ft.			6,600 ft.
Setback - N-Participant Property Line	1,025 ft.	600 ft.	1.1 turbine height	5,500 ft.
Setback - Participant Property Line	Rotor Radius			
Setback - County Road	1.1 turbine height	1.1 turbine height	1.1 turbine height	
Flicker	45 Hrs/yr.	30 Hrs/yr.		Guidance provisions
Exclusion Zones		1 Mile from Municipalities		
*** SB #279				Density 1/sq mi
Road Use Agreement	17 Pages	15 Pages	10 Pages	No Guidance
	\$200,000 PE Reimbursement	\$85,000/yr, Single POC	*Coffey Co. 28 pages	
	Force Account	\$500,000 Letter of Credit		
Decommissioning Agreement	10 Pages	11 Pages	10 Pages	Good guidance
		Detailed Cost Analysis		
Complaint Resolution Agreement		9 Pages	Similar	No Guidance
Anticipated Future Challenges				
	Property Tax Assessments - Should be assessed at state level			
	Recourse for failure to pay property tax assessments - Set off?			
	Regulating changes in ownership interests			

In summary, having standards in place are necessary in establishing long term relationships. Absent of such standards, it places each county in the position of being unduly pressured into long term relationships with parties that are yet to be disclosed. Counties that have an aversion in seeking professional help are at a huge disadvantage in these “prenuptial” agreements. Also worth noting is that anticipated valuation questions that are significant in states that did not provide the 10 year property tax exemption as Kansas does.

I am a licensed Professional Engineer who has worked for Kiewit based in Lenexa as a Learning Manager for eight years prior to becoming a county commissioner. Kiewit is a leading EPC provider in power generation and delivery markets.