

Proponent Testimony on Senate Bill 279
Utilities Committee--Kansas Senate
March 22, 2021

Submitted by Gayla Randel, Life-Long Kansas Resident, Taxpayer and Landowner in the Proposed Irish Creek Wind Project

Chairperson Thompson and members of the Utilities Committee, thank you for allowing me to voice my opinion to you today.

I am writing you as a concerned citizen of rural Kansas as we have a perfect storm which is impacting the State and it appears state elected officials are potentially not aware of it. Without further investigation, future projections and oversight initiated, Kansas may find they are being further exploited. This written testimony is lengthy, but please read it to completion as I felt a full explanation with references was needed.

This bill is important to the future of Kansans:

- SB279 is **not** saying wind development projects cannot happen.
- SB279 is **not** saying Kansas does not support renewable energy.
- SB279 **does not** prohibit landowners from signing easement and land leases.
- SB279 **does not** limit County Commissioners from agreeing to wind projects nor limited to this bill, in fact it indicates County Commissioners can have stronger oversight if they so desire.
- SB279 is **not** saying investment by outside businesses in Kansas isn't valuable or encouraged.
- SB279 **IS** providing guidance and oversight for wind development projects to ensure Kansas is not potentially exploited by wind development.

Over the past year, I have read industry publications, news releases, websites. I have read anti and pro wind materials and I have talked with individuals across the nation who live within industrial wind energy production plants. I have looked for peer reviewed studies and asked wind developers' questions directly. I have determined SB279 must be passed now because:

- Wind development in Kansas has expanded 500% over the last decade, with many more projects planned in the near and distant future.
- Rural communities have already voiced their concerns and shared the consequences of unregulated wind development.
- Over 50% of Kansas Counties have no zoning, and those with zoning may find them in need of revision when one considers turbine height has increased over time and can be as tall as 800 feet (as recently indicated by Next Era Energies for a wind farm in Republic County).
- And Michael Polsky, CEO of Invenergy (Kansas wind farm owner and promoter of the Grain Belt Express Transmission Line through Kansas) has explicitly stated in a November 2020 Forbes article he *"intends to erect more than 1,000 of these enormous machines (700 feet tall) on 100,000 acres in Kansas, on what could become the nation's biggest wind farm."* He continues to say he is ready

to “bulldoze, litigate and lobby” through objections. (Source: [The Green Revolution Has Been Won, Says America’s New Wind Billionaire \(forbes.com\)](#))

SB279 MUST pass because:

1. SB279 will enhance the chance of retaining the rural quality of life of Kansas.

Kansas is rural. I was told 75% of our State’s communities are comprised of 1500 people or less. This means the majority of Kansas has a great possibility of commercialization. Why do people across Kansas live rural? Other than family connections, one can say it’s for the quiet, the uninterrupted vistas, sense of community, dark star filled skies, sounds of crickets and frogs in the summer and visual stillness of a horizon and nighttime peace. This quality of life is what youth who left home after graduation are returning for with their families. One does not want to think of the impact to Kansas if these things are compromised so much they are lost.

2. SB279 will ensure ALL Kansans have a voice.

Landowner, farm producer, rural resident and non-participant are not always the same people.

- Landowners are not always the farmer/producer and a number of them do not live in the geographic area of their property. Some in fact live out of state or not even in the U.S. This is the only group that is targeted by wind developers. (The others are ignored for the most part.)
- Farm producers do own land, but as producer expenses (including property taxes) have gone up, and grain and livestock prices have remained stagnant or decreased, they have had to expand operation, hired by other landowners.
- Rural Residents are people who love living rural where there is no commercialization and industrialization to have the dark nights, open sky, quiet and simpler way of life. People who are rural residents, but do not farm are the life blood of the local towns and cities. They shop there, they send their children to the schools, they support the community churches and organization activities. And I believe as farms have gotten bigger (and less people actually farming) rural towns rely even more on the rural residents to remain viable.
- Non-participants are those who live rural and may or may not be farm producers. They can be people who grew up in Kansas or were drawn to Kansas because we are a rural State with the amenities I mentioned above. Non-participants are not interested in leasing their property for development.

Landowners, farm producers and rural residents are commonly treated individually which means a collaborative voice is missing, leading to potential disrespect and silenced input. This can lead to one group getting their voices here, and the others being exploited where the only recourse is a lawsuit. However, these are not normally wealthy people who can compete with Big Wind. There is not enough money, expertise, and time to beat Big Wind which the developers know. It appears (with almost certainty) if they wait out complaints long enough, and spend enough money, the small guy will give up even if their cases are valid and winnable. This has happened in Kansas already. SB279 will provide the guidance to ensure all have a voice.

3. SB279 will provide guidance to local elected officials to protect all constituent’s health and welfare when working on wind siting and project parameters.

There is limited official guidance for local elected officials related to appropriate on land wind development projects. The issues we have today were somewhat if not directly caused by the “[Wind Energy Siting Handbook: Guideline Options for Kansas Cities and Counties](#)”. This publication was authored by the Kansas Energy Council, in April of 2005.

(http://www.kansasenergy.org/Kansas_Siting_Guidelines.PDF).

It begins by stating the purpose of the handbook:

“This handbook offers voluntary guideline options for Kansas cities and counties to consider in response to possible wind energy development in their areas. Power generation from wind is a new type of development in Kansas. In order for wind energy development to proceed in a manner that is carefully planned, inclusive, and expeditious, it is necessary to anticipate potential impacts and engage in a process that addresses various components and issues.”

It divides siting advice for zoned and unzoned counties. It suggests unzoned county has four options: 1) Status Quo; 2) Adopt Zoning; 3) Other regulations (such as licenses); and 4) Moratoriums.

If one considers most if not all City Officials and County Commissioners holding full time jobs or are in retirement, then #1—Status Quo appears to hold the most desirability as it will take the least amount of work. (Note: Approximately 50% of Kansas Counties are unzoned)

“Status Quo--Unzoned counties may simply choose not to regulate the siting of wind energy development, which delegates the ultimate decision on the siting of such development with the developers and landowners, either individually or collectively.”

Note the section marked in red. What is missing from this guidance? Only the landowner of the four types of citizens found in rural Kansas have a voice.

If you are a landowner with the amount of property desirable to a developer, you have THE ONLY VOICE. But those most impacted by a wind project include:

- Farmers/Producers...but they have no voice.
- Non-participants...but they have no voice.
- Rural residents...but they have no voice.

Landowners having the only voice must change because they:

- CAN be people who do not live rural or even in Kansas.
- May NOT live in the footprint therefore have limited (if any) concern about siting.
- May live out of state, taking that money out of state...therefore land payments shared by wind developers most likely do NOT impact Kansas economies.
- May have farm producers who farm for them and more likely living closer to the farmed property but are hesitant to share concerns about turbine placement for fear of losing their farming contracts.
- Can edit their wind leases to site turbines as far as they can from their own homes. (But where does that put the turbines in relationship to their neighbors?)

STATUTE 19-212:

The State of Kansas Statute 19-212 indicates in the “Powers of board of commissioners, Eleven—“To contract for the protection and promotion of the public health and welfare.” (Source: [Statute | Kansas State Legislature \(kslegislature.org\)](http://kslegislature.org))

This has created a dilemma...how do County Commissioners and City Councils ensure their constituents health and welfare is ensured when working with a wind developer? One would believe the Kansas Wind Siting Handbook would provide such guidance, but it does not. SB279 will provide this guidance. (NOTE: Ensure the Wind Siting Handbook is updated including this information.)

4. SB279 will ensure homes and properties are protected from overzealous developers who would steal the property rights from nonparticipants.

How close is too close? A number of turbine safety manuals share a safe distance from an operational turbine to be 1300 to 1640 feet to eliminate direct injury to a wind technician. Page 3 of the Vesta Safety Manual also states to not allow children to play within this distance. (Vestas: [Appendix A - SWPPP \(wind-watch.org\)](http://www.vestas.com)). Note this information is from 2006 when turbines were smaller than they are today. According to the 2018 Wind Technologies Market Report which shared the following average turbine heights:

- 2002 213 ft
- 2012 311 ft
- 2018 410 ft
- And today, they are commonly 500 to 600 feet, but can be as tall as 800 feet

Placing turbines in close proximity to rural Kansas citizens is being done because there is no set back expectations from non-participating homeowner properties. Non-participating land and homeowner properties are being “counted” within placement distances as measured from home foundations, not from property line. This also provides a question about safety. Next Era Energies has stated they feel a mere 550 feet from a property line is appropriate for the proposed Irish Creek Windfarm in Marshall County. This appears to mean then 1000 or so feet overlapping onto the non-participants property cannot be used safely by children or others.

In Michigan this is called “trespass zoning” as trespass means “to enter the owner’s land or property without permission” and zoning “to separate conflicting uses of land”. If measurements of sound, shadow flicker and infrasound is from a home rather than property line, there is in fact NO separation of the conflicting use, thus “trespass zoning” is used to describe this land grab.

Developers will say 1500 foot set back is plenty. That is considered an “industry standard”... a standard set by the wind industry itself (such as The American Wind Energy Association or [awea.org](http://www.awea.org) but now called [The American Clean Power Association](http://www.theamericanpowerassociation.com)) Creditability is questioned when the standard is set by a national trade association with memberships from the 800 companies directly impacted by the limitations or allowances this standard will allow. Their board of directors include representatives from companies doing business in Kansas including NextEra Energies, EDF Renewables, Invenergy, and Apex Clean Energy.

The foundational “industry standard” is based upon the potential “direct” injury from ice or blade throw, but where is the research to show how far the setback for 2021 heights? SB279 ensures measurements are from property lines to ensure a non-participant can safely enjoy their entire property.

5. SB279 will define what is meant by “properly sited” as per 500-foot turbines to ensure health and safety of Kansans.

Wind developers state “There is no documented health issues when turbines are properly sited.” But what is the definition of “properly sited”? A quantifying answer is difficult if not impossible to receive from wind developers, but you CAN find identify results of turbines NOT properly sited. Health studies, research results and interviews of those living too close tell the story.

Whereas the standard 1500 feet is industry standard for direct injury (meaning directly hit by a physical part of a turbine or ice), that does not address the “indirect” health impacts of the noise, shadow flicker or infrasound/vibration. With respect to time, only noise is addressed here.

It is important to gain a reference for sound as it relates to rural environments. The Acoustic Ecology Institute (aeinews.org), states rural daytime sound to be 30 to 35 dB and rural nighttime sound levels at 25dB. A sound level limit of 40dB daytime noise is aligned with allowances identified by the World Health Organization as is 35 dB for nighttime. It is noteworthy to understand noise levels double for each 10dB increased. Recently, a 2019 study published in the Journal of the Acoustical Society of America stated, “For each 1 dB increase in wind turbine sound level, the odds of hearing the wind turbine increased by 31%.” In addition, this same study shared adverse noise was not reported at 1.243 miles from the turbine which aligns to the SB279 distances.

(Source: <https://doi.org/10.1121/1.5121309>)

Additionally, the World Health Organization has indicated turbines are a health risk. Most recently a 2014 study identified health issues related to nighttime noise interrupting sleep beginning at a noise level of 35dB (Table 1 Executive Summary page XIII) which makes sense as that is 10dB above normal rural nighttime levels and thus a doubling of the sound. It advances to severe health issues of hypertension and myocardial infraction at 50dB and psychic disorders at 60 dB (Table 2, Executive Summary page XIV). A breakdown of noise levels on sleep can be reviewed from 30dB through 55dB which also indicates some populations will be more vulnerable than listed (Table 3 Executive Summary page XVII)

(Source: https://www.euro.who.int/_data/assets/pdf_file/0017/43316/E92845.pdf)

In addition, the size of the turbines impacts the noise level. As turbines have gotten taller, setbacks also need to be larger. It is important to add a turbine height of 500 ft to SB279 so an expanded set back can be edited as projects develop.

How do you to mitigate these potential health risks? Through set back distances. France and Germany state 1-mile minimums, others say 2 or more miles is necessary. California (which is the leader in wind regulation) has stated strong set back distances. There is no standard setback for Kansas that addresses both direct and indirect concerns. But SB279 will establish a setback that protects most Kansans from both direct and indirect injury.

6. SB279 will establish a parameter to determine if the Wind Project is being pushed into a space that is too small.

Wind developers have a desired project size before they move into a location which includes a certain amount of land to lease. This includes land for turbines, cabling, transmission line and substation. But what happens if a wind developer does not obtain the land they need but wish to push their project? They will likely use trespass zoning and ignore the Land Based Wind Energy Guidelines produced by the US Fish and Wildlife Service. ([USFWS: Guidance for Wind Energy Development](#)).

A True Example: Marshall County Kansas

I live in southern Marshall County Kansas. I live where the tall grass Flint Hills begins. I live near the small town of Frankfort, Kansas population 650. I live where an additional 200 people live in the rural spaces surrounding it. I live in an unzoned county with no comprehensive plan. I live where the County Commissioners have elected to take the "Status Quo" route when NextEra Energies came to them. I am a nonparticipating landowner and rural resident.

The Irish Creek Wind Project became active in October 2019 with projected start construction date of late April, 2021...only 18 months of planning, when the average is 2-3 years. There has been no water study, no independent wildlife impact studies, and very little transparency. Any contacts to state and federal agencies to ask what is going on has been by local volunteers.

This is what an unregulated/ limited guidance State will allow to happen to a community:

- A plan for 108 turbines, 500 ft tall (46 stories each) with 18 alternates will be sited over five townships in southern Marshall County
- A 50dB sound allowance, 550 feet from property line and 1500 feet from home foundations was approved by our County Commissioners.
- There are 85 non-participants and 32 participating landowners in the footprint.
- The footprint includes Vermillion, Clearfork, Bigelow, Wells and Center Townships.
- Landowners of over 94,000 acres have voiced no support for this wind farm (only approximately 18,000 acres are in property right easements and leases when 70,000 acres was needed)
- Of the 85 non-participating (NP) landowners, 54% have at least one turbine within 3960 feet (.75 mile), 65% within 5280 feet (1 mile) and 100% within 2 miles of their homes (not property lines).
 - Three NP landowners will have 5 turbines within a mile of their homes
 - Three NP landowners will have 6 turbines within a mile of their homes
 - Three NP landowners will have 7 turbines within a mile of their homes
 - Three NP landowners will have 8 turbines within a mile of their homes
 - One NP landowner will have 9 turbines within a mile of their home.
- 80 turbines are in violation of trespass zoning (74% of the project)
 - Another 13 alternative sites (out of 18) are also trespass zoning (72%)
 - Sixty nonparticipating landowners have at least one turbine within 1000 feet of their property line.
 - The closest property line set back is 340 feet
 - Six nonparticipating landowners have more than four turbines in trespass zoning of their properties.
 - Two families have turbines less than 1400 feet of their family fishing ponds

- One family has a turbine approximately 400 feet from their deer stand
- Wells township alone spans 23,040 acre with 51 homes
 - Only 6943 acres (10.8 miles) are in land leases, but 69 turbines sited (10 turbines per mile)
- Vermilion, Clearfork and Bigelow townships are found within the 4% of the remaining Flint Hills
 - Marshall County is recognized as one of the core Flint Hills counties, but the only one not part of the governor's moratorium
 - Native tall grass is found here with minimal human development
 - Federal land runs through the footprint as part of the Tuttle Creek Flood plain
 - Eagles are nesting with in the footprint (one is sitting already)
 - This is prime prairie chicken unfragmented habitat and they have been recently sited there.
 - Migratory birds (cranes and Canadian geese) pass through here.
 - A one-of-a-kind feature formed by a glacier is found here called "Twin Mounds"
 - The Glaciated Region (which stops at the Big Blue river to the west) and the Flint Hill region meets here...a unique Kansas only geographic location.
 - Documented Oregon Trail Ruts are found here
 - A natural spring with a strong water flow is found here (tied to an underwater system)

But even with these significant environmental and historical features, the following is proposed:

- Over 30 turbines are sited in the Flint Hills, most in tall grass area
- They are found on 11,140 acres signed in land leases, however 57,980 acres are owned by NP landowners.
- Twelve turbines are between 679 and 1767 feet of the Pottawatomie County line (a protected county through the Governors moratorium)
- Nine turbines would be trespass zoning into Pottawatomie County NP landowner's property (another reason why state level regulation is needed)
- Three turbines are so close they will likely compromise the Oregon Trail ruts.
- One turbine is almost on top of the natural spring, vital to cattle ranchers in two counties
- Miles of compacted and rocked access roads will be built
- Noise levels will increase which are known to disrupt prairie chickens and others wildlife environments.

Why is this development being allowed to happen with all the issues that exist?

Because Kansas has no guidance for our County Commissioners who repeatedly said we cannot stop it unless we want to be sued. They were ill prepared to make such a life changing decision.

Wind developers can do this because no one has said they cannot. Everything is "recommended guidance". And Next Era's legal counsel who testified against the HB2273 hearing in 2019 stated "we require the county to have a comprehensive plan and a process to adopt zoning" was not truthful to the committee. Marshall County does not have one (and Commissioners said they were not told by Next Era they needed one). but Next Era moved into our community anyway.

And even though we can predict what issues will likely develop if this wind project is completed, our legal counsel shared we have no platform for suing until after they are built, or after harm to wildlife is present), so our chances to stop a loss of our Kansas community is bleak.

I ask is for an injunction against the Irish Creek Wind Project to allow time to complete independent studies and set back issues. If not, another Kansas community will suffer the consequences of an unregulated project. You know SB279 MUST pass. Marshall County Kansas is proof of why this is needed.

But must WE live with the consequences when you could stop it?

Thank you for allowing me to share my insights. Thank you for considering my request.