

February 2, 2022

To: **Honorable Senator Mike Thompson**, Chair
State of Kansas –Utilities Committee
From: **Gayla Randel**, Concerned Rural Citizen
Marshall County Kansas
RE: SB353 Support

According to State of Kansas Statute Chapter 72 Section 74, Article 74-7284

74-7284. Declaration of purpose of state government and intention of act. The legislature hereby declares that the purpose of state government is to keep secure the constitutional rights of Kansas citizens, to protect their health, safety and welfare, and to otherwise serve the public need in the most economically beneficial, operationally efficient, and cost effective manner possible.

I am writing in support of SB353 which offers non-participant protections from the abuse of wind or solar developers who appear to ignore non-participant rights. **As elected officials, it is your duty to ensure the constitutional rights, health, safety and welfare of ALL Kansans is secured.** SB353 will begin this process for wind and solar development. *Why is this needed?*

Kansas Statute addresses many directives to ensure the rights of Kansans are not abused, infringed, or repealed with entire chapters focused on what these rights and processes mean as per government involvement, private vs public, legal issues and more. There are 84 chapters to be specific, but what IS missing is guidance on renewables energy such as wind and solar development. I find this remarkably interesting as *there are chapters/statutes devoted to mining, oil, gas, roads, bridges and even statues concerning commercial livestock placements*, but little if any on oversight and statute on wind and solar. It is time to set parameters to protect the rights of ALL rural Kansans.

According to a 2005 publication entitled “Wind Energy Siting Handbook: Guideline Options for Kansas Cities and Counties” only the landowners who are entering land lease contracts with the developers have rights as per contract stipulations. Even elected county officials are failing to ensure non-participant rights are considered especially since the only resource the state has provided them is the outdated publication mentioned above from the Kansas Energy Council. **There is no guidance on ensuring the rights of nonparticipating landowners are considered for either wind or solar** that I could find outside of the one already mentioned. This is another reason why SB353 is vital to Kansas.

State level statute is vital to ensure ALL citizen rights are respected and considered as county by county zoning will NOT protect those living on or close to the county or state borders. This is evident by the Irish Creek Wind Development in southern Marshall County Kansas. A rural resident had absolutely NO representation as the wind development was in one county, but he lived right by the border in the adjoining county. This yet another reason why the State of Kansas must have statute.

Developers repeatedly use an ‘industry standard’ to determine set back, which was set by the exact entities that benefit from a smaller distance. The “American Wind Energy Association” is commonly quoted in support of such standard (1500 feet setback), however this association (now called “The American Clean Power Association”) is a trade association made up of the companies which are the developers, manufacturers and suppliers of Wind and Solar products. Their board of directors includes representatives of companies doing business in Kansas such as NextEra Energies, EDF Renewables, Invenergy, and Apex Clean Energy. It is very convenient for them to set their own standards.

In a 2006 Vesta Safety Manual, a technician needs to be 1300 to 1640 feet back from an active turbine for safety reasons. A 2018 Wind Technologies Market Report indicates an average turbine height in 2002 was 213 ft tall, and 311 ft tall in 2012. This would mean an average height of turbines in 2006 was somewhere in between. Using the same justification, a setback for the 500 ft turbines (common height today) at the same per foot setback would mean twice that distance. But that is only trying to understand why 1500 is still used by developers when today's turbines are much taller.

As per noise levels, the World Health Organization have confirmed studies stating any consistent noise over 35 dB can lead to sleep disorders and even psychotic disorders at higher levels (50 to 65 dB). **Please ensure the 35 dB noise is absolute maximum and not an average reading** which allows much louder noises as rural quiet has been identified as ranging between 25 to 35 dB at night and 30-35dB for daytime quiet. (Source: Acoustic Ecology Institute) Also, **ensure there is a reporting system directly to the State of Kansas when such noise levels (or shadow flicker, ice throw, etc.) are violated** as there is no direct state reporting in place presently.

A 2019 study by the **Journal of Acoustical Society of America states 6563 ft from turbines reported no adverse noise.** France and Germany state 1-mile (5280 ft) setback, but that is only if turbine heights do not increase. **Identifying turbine height in the statute ensures setback increases as height increases.** Reports indicate the only way to mitigate turbine noise is larger setbacks. **Ensure a minimum of 1 mile (5280 ft) is included in the statute...6563 is better as per the 2019 study.**

Set back must be from property lines as non-participants do NOT give permission for their land to be used as part of any setback unless they contract away such permissions. County Commissioners do not have the right to give approval for this setback either as it is privately owned land. Any setback which includes non-participating landowner's property also limits their ability to enjoy and use their own land. **Any setback must be from a property line, not from a home foundation as the industry commonly promotes as acceptable.** This is a final reason SB353 is needed.

Summary:

Wind and Solar lobbyists and attorneys will likely fill the opponent spots are paid to say things such as any setback other than the industry standard means the industry can no longer function, or that regulation will kill new developments. But by stating any regulation will negatively impact the industry, *aren't they saying they HAVE to infringe upon the property rights of the non-participant through placement too close to their property lines to make it work?* They have not been made to play by the rules (like other industries have) where the neighboring landowner rights were considered. Remember, studies indicate a larger setback is required to mitigate noise and shadow flicker. **It is your responsibility as elected officials to begin regulation through the passing of SB353.**

It is time for the multi-billion-dollar renewable focused companies to understand ALL landowners in Kansas have equal rights to enjoy their properties, and ALL RURAL Kansans need to be respected through setbacks and noise level mitigations through statute. **This is NOT saying they cannot develop.** It just means they must ensure the rights of ALL Kansans are respected.

If you as an elected official do NOT support SB353, what message will that send especially when looking at your constitutional obligations to ensure the constitutional rights, health, safety, and welfare of all Kansans?