



Testimony Provided To
Senate Utilities Committee
Kimberly Svaty, Public Policy Director
February 10, 2021

In Opposition to Senate Bill 353

Chairman Thompson, Vice-Chairman Petersen, Ranking Member Francisco, and members of the committee,

This afternoon I appear before you on behalf of the Advanced Power Alliance and the forty-plus members of our organization which represent a diverse cross section of the world's leading energy companies, energy investors, energy consumers in the advanced power industry. Most of these organizations have business interests in Kansas via operating wind farms, wind farms under development, purchase power agreements, development headquarters or manufacturing facilities. TradeWind Energy, now owned by Enel, a tremendous locally grown Kansas success story, was the largest developer of wind projects in the nation in 2017. Our member assets in Kansas span the state from the most densely populated to the least, from the fastest growing to those with the most rapid population decline. Since the first wind farm came online in 2001, the wind energy industry has invested more than \$14 billion private dollars in Kansas and created more than 20,000 direct and indirect jobs in both rural and urban Kansas with several billion dollars of new wind farms under construction. We house the nation's first wind turbine technician certification program which has a 100% job placement rate. **The Advanced Power Alliance stands in strong opposition to SB 353.**

Wind Farm Siting History

The first wind farm was installed in Kansas in 2001 in Montezuma. Wind energy leasing across Kansas continued through the early 2000s. In 2004, a Kansas Wind Energy Siting Taskforce was assembled to discuss siting guidelines. The taskforce was diverse and comprised of local governments, environmental conservation organizations, environmental groups and a few wind developers. In 2005, the taskforce issued siting guidelines which have served as a baseline template for all involved in siting wind farms. The same year, a Kansas county in the Flint Hills banned commercial wind development in the county. A landowner took the County to court and the case went all the way to the Kansas Supreme Court in what became known as the Zimmerman v. Wabaunsee County case. The Supreme Court upheld the county's decision to ban commercial wind development. In 2006, Governor Kathleen Sebelius issued the "Heart of the Flint Hills" box which effectively halted wind farm development in 16 Kansas counties. Local Kansas utilities agreed to not purchase any wind power from projects developed within the Flint Hills or on native prairie. The Flint Hills box was doubled in sized in May 2011 when Governor Brownback announced the expanded box known as the "Tallgrass Heartland". All or most of 33 Kansas counties were included in the box which precluded wind development in the areas historically known for native intact prairie. Many wind projects were halted mid-development. Counties that wanted the economic development benefits of wind were overruled and the private property rights of landowners in about one-third of the state were impeded upon. **Whether the siting guidelines are policy, local ordinance or executive action, the advanced power industry has followed the rules of the road.**

How Wind Projects are Sited

There are three key components to developing a wind farm in Kansas:

- (1) A great wind energy resource & land use compatibility;
- (2) Community/landowner support;
- (3) Environmental Impacts

These three elements work in tandem. Without one, a wind farm will not be developed in a particular location. In general, the places most suitable to place wind projects have these features:

- (1) Strong and consistent winds
- (2) Large, open space, such as agricultural land
- (3) Community acceptance
- (4) Minimal risk to wildlife

After a desktop analysis confirms good wind potential and transmission interconnection, a developer approaches landowners about the possibility of hosting a “Met Tower” to secure 2-3 years-worth of wind speed data. If the data is looking positive, landowner outreach begins for potential leasing. In zoned counties, conversations with the County Commission begin for conditional/special use permitting and road maintenance agreements, county contribution agreements and decommissioning. Half of Kansas counties are unzoned. In those counties, the road maintenance agreement, county contribution agreement and decommissioning agreement must be approved by the County Commission.



Leases are negotiated with individual landowners with deference given to landowner preference for tower placement and setbacks to the best extent possible. Public meetings are held. Landowner meetings are held. In zoned counties, the Planning & Zoning Commission must approve the project before forwarding the project to the County Commission for final consideration along with the three other agreements. Along the way, the project is undergoing separate permitting at the state and federal level related to: FAA permits,

watershed, biological, archeological, historical/cultural review to name a few.

Concerns with SB 353

SB 353 ends the long-standing successful process of siting wind farms in Kansas which gives deference to landowners and local county control. Wind energy leases are signed by willing landowners. They are voluntary. The landowners may sign the lease because of financial benefit, they may sign the lease for environmental concern, they may sign the lease as a gift to their children. The State cannot be in the business of judging whether one person’s resistance is more worthy, heart-felt or valid than the support of another.

Setbacks

Counties have instituted setback guidelines or other “rules of doing business” for all forms of business and industries after community consideration and deliberation.

There is no evidence to support the overly restrictive setbacks for public safety benefit.

Typical setbacks across Kansas counties:

- Non-participating property lines: 500 feet or 1.1 times the total turbine height, whichever is greater.
- Residences or occupied structures: 1,000 feet. Pottawattamie County¹ and Pratt County² have some of the most restrictive setbacks at 2,500 feet.
- Roads: 500 feet or 1.1 times the total turbine height, whichever is greater; with some identifying turbine height plus 50 feet.

SB 353 proposes 10 times the system height or 5,280 feet, whichever is greater, any non-participating landowner's property, public building, airport, federal wildlife refuge, public hunting area or public park.

This provision is extremely onerous. Restricting distance from *any airport* is too broad and could open small airports up for interpretation under the definition, which could potentially result in elimination of large areas within counties from wind development. Some counties place height restrictions on turbines within a particular radius of a municipal airport (e.g., Pratt County restricts turbines to 200 ft and under within 8 miles of their municipal airport). Most defer to the FAA on airport restrictions. Note detailing of Federal Aviation Administration rules and regulations attached to my testimony. Further, there are many legal references that suggest states are pre-empted from regulating in the space by the Constitution and Federal Law.

Kansas has a "walk-in hunting" program that provides hunting access to private property. The Kansas Department of Wildlife and Parks contracts with local landowners yearly and these contracts and areas can vary year to year. Yearly walk-in hunting enrollment changes would make it difficult to keep track of all the hunting areas when trying to develop projects.

There are over 40 state wildlife areas and preserves³, and four national wildlife refuges⁴ in Kansas sprinkled across the state. Additionally, many communities include multiple public parks and areas for recreation. This setback requirement would potentially eliminate large areas of land from development. Under the proposed bill public park and public building are not defined. Both are nebulous terms that could be used to intentionally complicate or preclude development.

Conclusion

SB 353, like its predecessor SB 279 and all the other seven bills introduced thus far this legislative session, was crafted in a vacuum without any input from the industry it seeks to regulate. The advanced power industry is always willing to talk with stakeholders as evidenced by our work nationally, at the state level and locally to responsibly site facilities that are embraced by its community and landowner hosts. The industry works diligently to continue to improve the development process with respect to landowners, county leaders, wildlife and conservation groups, environmental groups, the United States military, the Federal Aviation Administration, policymakers and purchasers of wind power. The Advanced Power Alliance cannot support a measure that tramples private property rights, usurps local control, undermines long-standing development policies, attempts to override federal regulations, and was crafted to halt energy investment and development in Kansas.

We strongly encourage your opposition to SB 353 and any attempts to move the content of SB 353 into any other legislative vehicle this session.

¹ <https://www.pottcounty.org/DocumentCenter/View/3635/Article-5---Agricultural-Zoning-Districts-PDF>.

² <http://prattcounty.org/DocumentCenter/View/77/Adopted-Pratt-County-Zoning-Regulations-5-7-2012-Reduced-size?bidId=>

³ <https://ksoutdoors.com/Services/Publications/Maps-State-Wildlife-Areas>

⁴ <https://ksoutdoors.com/KDWPT-Info/Locations/National-Refuges-Grasslands-and-Preserves>